

6-3-2009

# State v. Jacobson Clerk's Record v. 1 Dckt. 36257

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# LAW CLERK

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

DAN S. JACOBSON,

Defendant-Appellant.

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Appealed from the District Court of the First Judicial  
District of the State of Idaho, in and for Bonner County

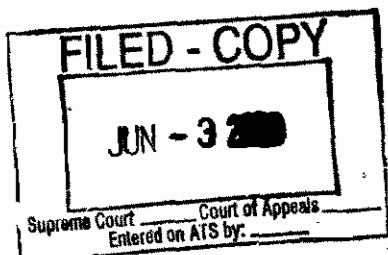
HON. STEVE VERBY  
District Judge

---

FRED R. PALMER  
Attorney for Appellant

LAWRENCE G. WASDEN  
Attorney for Respondent

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36257

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,	)	SUPREME COURT NO. 36257
	)	
	)	CLERK'S RECORD ON APPEAL
Plaintiff-Respondent,	)	
vs.	)	
	)	
DAN S. JACOBSON,	)	
	)	
	)	
Defendant-Appellant.	)	
_____	)	

CLERK'S RECORD ON APPEAL

Appealed from the District Court of the First Judicial District of the State of Idaho, in and  
for the County of Bonner.

HONORABLE STEVE VERBY  
District Judge

LAWRENCE WASDEN  
ATTORNEY GENERAL  
P.O. BOX 83720  
BOISE, ID 83720-0010

ATTORNEY FOR PLAINTIFF

FRED R. PALMER  
ATTORNEY AT LAW  
106 W. SUPERIOR STREET  
SANDPOINT, ID. 83864

ATTORNEY FOR APPELLANT

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State of Idaho vs. Dan Stanley Jacobson

Date	Code	User		Judge
12/29/2004	NEWC	TURNBULL	New Case Filed	Magistrate Court Clerks
	BNDG	TURNBULL	Bond Posted - Cash (Receipt 327978 Dated 12/29/2004 for 500.00)	Magistrate Court Clerks
	PROS	TURNBULL	Prosecutor assigned Sandpoint City Prosecutor	Magistrate Court Clerks
	NOTC	TURNBULL	Notice to defendant	Magistrate Court Clerks
	MISC	TURNBULL	Current inmate information summary by name	Magistrate Court Clerks
12/30/2004	APER	TURNBULL	Defendant: Jacobson, Dan Stanley Appearance Fred R. Palmer	Magistrate Court Clerks
	APPR	TURNBULL	Appearance Through Attorney, plea of not guilty & req for jury trial	Magistrate Court Clerks
	RQFD	TURNBULL	Request For Discovery	Magistrate Court Clerks
1/4/2005	CITF	TURNBULL	Original Citation Filed	Magistrate Court Clerks
	AFPC	TURNBULL	Affidavit Of Probable Cause	Magistrate Court Clerks
	ORPC	TURNBULL	Order Finding Probable Cause	Barbara Buchanan
1/18/2005	RRFD	ADLER	Response To Request For Discovery	Magistrate Court Clerks
	RQFD	ADLER	Plf's Request For Discovery	Magistrate Court Clerks
1/19/2005	MOTN	ADLER	Motion to dismiss	Magistrate Court Clerks
1/31/2005	HRVC	ADLER	Hearing result for Motion to Dismiss held on 03/02/2005 01:30 PM: Hearing Vacated	Steve Verby
	CHJG	ADLER	Change Assigned Judge	Magistrate Court Clerks
	CHJG	HARBISON	Change Assigned Judge	Debra A. Heise
	HRSC	HARBISON	Hearing Scheduled (Pretrial Conference 02/22/2005 02:00 PM)	Debra A. Heise
	HRSC	HARBISON	Hearing Scheduled (Jury Trial 03/10/2005 09:00 AM)	Justin W. Julian
		HARBISON	Notice of Hearing	Debra A. Heise
2/18/2005	DRCD	OPPELT	Driving Record	Debra A. Heise
2/22/2005	CTLG	OPPELT	Court Log- #05-176	Debra A. Heise
	MISC	OPPELT	Waiver of Personal Appearance at Pretrial Hearing	Debra A. Heise
	WAIV	OPPELT	Waiver Of Speedy Trial	Debra A. Heise
	INHD	OPPELT	Hearing result for Pretrial Conference held on 02/22/2005 02:00 PM: Interim Hearing Held	Debra A. Heise
	HRVC	OPPELT	Hearing result for Jury Trial held on 03/10/2005 09:00 AM: Hearing Vacated	Justin W. Julian
	NOFH	OPPELT	Notice Of Hearing	Debra A. Heise
2/24/2005	HRSC	OPPELT	Hearing Scheduled (Jury Trial 05/05/2005 09:00 AM)	Debra A. Heise
	MOTN	ADLER	Motion to dismiss, motn to supp & Notc of Motn	Debra A. Heise
	HRSC	ADLER	Hearing Scheduled (Motion to Dismiss 04/13/2005 04:00 PM)	Debra A. Heise



Date: 4/28/2009

## First Judicial District Court - Bonner County

User: MUELLER

Time: 0:09 PM

## ROA Report

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Case: CR-2004-0009931 Current Judge: Idaho Supreme Court

Defendant: Jacobson, Dan Stanley

State of Idaho vs. Dan Stanley Jacobson

Date	Code	User		Judge
2/24/2005	SUBI	TURNBULL	Subpoena Issued -BC Deputy Wixson	Debra A. Heise
2/25/2005	RQFD	ADLER	Plf's Request For Discovery	Debra A. Heise
3/2/2005	RRFD	ADLER	Response To Request For Discovery	Debra A. Heise
4/13/2005	CTLG	ANDERSON	Court Log- 05-339/340	Debra A. Heise
	EXHB	ANDERSON	Exhibit List	Debra A. Heise
	INHD	ANDERSON	Hearing result for Motion to Dismiss held on 04/13/2005 04:00 PM: Interim Hearing Held	Debra A. Heise
	HRSC	ANDERSON	Hearing Scheduled (Motion to Dismiss 04/27/2005 03:00 PM) Continued from 04/13/05	Debra A. Heise
4/27/2005	CTLG	OPPELT	Court Log- #05-414	Debra A. Heise
	INHD	OPPELT	Hearing result for Motion to Dismiss held on 04/27/2005 03:00 PM: Interim Hearing Held Continued from 04/13/05	Debra A. Heise
	DENY	OPPELT	Hearing result for Motion to Dismiss held on 04/27/2005 03:00 PM: Motion Denied	Debra A. Heise
5/4/2005	ORDR	ANDERSON	Order Deny Motion To Dismiss, Motion To Suppress	Debra A. Heise
5/5/2005	CTLG	ANDERSON	Court Log- 05-460	Debra A. Heise
	CPGT	ANDERSON	Hearing result for Jury Trial held on 05/05/2005 09:00 AM: Change Plea To Guilty Before H/t	Debra A. Heise
	SDUI	ANDERSON	Statement Of Defendant's Rights-dui	Debra A. Heise
	MISC	ANDERSON	Plea Bargain Agreement	Debra A. Heise
	HRSC	ANDERSON	Hearing Scheduled (Sentencing 07/18/2005 09:00 AM) set per DAH	Debra A. Heise
	NOFH	ANDERSON	Notice Of Hearing	Debra A. Heise
	CPGT	PEINE	Change Plea To Guilty Before H/t	Debra A. Heise
6/6/2005	MISC	PEINE	DUI Evaluation	Debra A. Heise
			Document sealed	
7/18/2005	CTLG	PEINE	Court Log- #05-703	Debra A. Heise
	JLIS	PEINE	Jail Information Sheet	Debra A. Heise
	CAGP	PEINE	Court Accepts Guilty Plea (Guilty I18-8004 {M} Driving Under The Influence)	Debra A. Heise
	SNIC	PEINE	Sentenced To Incarceration (I18-8004 {M} Driving Under The Influence) Confinement terms: Jail: 2 days.	Debra A. Heise
	PROB	PEINE	Probation Ordered (I18-8004 {M} Driving Under The Influence) Probation term: 2 years. (Unsupervised)	Debra A. Heise
	WHJD	PEINE	Withheld Judgment Entered (I18-8004 {M} Driving Under The Influence)	Debra A. Heise
	STAT	PEINE	STATUS CHANGED: closed pending clerk action	Debra A. Heise
7/19/2005	ORDR	NIKOLAUS	Stay Order	Debra A. Heise
	APDC	NIKOLAUS	Appeal Filed In District Court	Steve Verby

State of Idaho vs. Dan Stanley Jacobson

Date	Code	User		Judge
7/19/2005	NTOA	NIKOLAUS	Notice Of Appeal	Steve Verby
	MISC	NIKOLAUS	Trans est \$33.00	Steve Verby
	CHJG	PEINE	Change Assigned Judge	Steve Verby
	STAT	BRACKETT	STATUS CHANGED: reopened	Steve Verby
7/26/2005	MISC	NIKOLAUS	Trans est for 4-13 & 4-27 hearing \$302	Steve Verby
7/28/2005	BONT	NIKOLAUS	Bond Posted for Transcript (Receipt 339408 Dated 07/28/2005 for 302.00)	Steve Verby
8/22/2005	MISC	PEINE	Ltr from ISC - Def had prior WHJD	Debra A. Heise
8/25/2005	HRSC	PEINE	Hearing Scheduled (Motion 08/31/2005 01:30 PM) Motion why WHJD should not be revoked	Debra A. Heise
	NOFH	PEINE	Notice Of Hearing	Debra A. Heise
	MISC	ADLER	Rule 35 Motn to modify sentence	Debra A. Heise
8/31/2005	CTLG	ANDERSON	Court Log- 05-862	Debra A. Heise
	HRHD	ANDERSON	Hearing result for Motion held on 08/31/2005 01:30 PM: Hearing Held Motion why WHJD should not be revoked	Debra A. Heise
	DENY	ANDERSON	Hrg result for 08/31/2005 01:30 PM: Motion Denied Motion why WHJD should not be revoked	Debra A. Heise
10/5/2006	NOPD	FORELL	Notice Of Proposed Dismissal Issued	Steve Verby
10/19/2006	LETT	FORELL	Letter fr Sandpoint City Prosecutor, no objection to dismissal of appeal, but do object to dismissal of case	Steve Verby
10/24/2006	AFFD	FORELL	Affidavit for Retention (fr Fred Palmer for Def)	Steve Verby
12/6/2006	ORDR	MORELAND	Order of Retention	Steve Verby
	REVR	MORELAND	Reviewed And Retained	Steve Verby
12/22/2006	NOTC	MORELAND	Notice of Transcript Lodged	Steve Verby
	MISC	MORELAND	Statement from Val Larson - Transcript of Hearing on Motion to Dismiss \$234.00	Steve Verby
	BNDV	MORELAND	Bond Converted (Transaction number 304665 dated 12/22/2006 amount 234.00)	Steve Verby
	BNDV	MORELAND	Bond Converted (Transaction number 304666 dated 12/22/2006 amount 68.00)	Steve Verby
	ORDR	CMOORE	Scheduling Order	Steve Verby
1/11/2007	NLT	BRACKETT	Notice Of Lodging Transcript On Appeal sent	Steve Verby
1/31/2007	MOTN	MORELAND	Motion to Dismiss	Steve Verby
	BREF	MORELAND	Appellant's Brief	Steve Verby
2/14/2007	NST	BRACKETT	Notice Of Settling Transcript On Appeal	Steve Verby
2/27/2007	BREF	MORELAND	Brief of Respondent	Steve Verby
3/12/2007	MOTN	JACKSON	Motion to Extend Time	Steve Verby
3/21/2007	ORDR	MORELAND	Order Extending Time to file Appellant's Reply Brief to April 15, 2007	Steve Verby

State of Idaho vs. Dan Stanley Jacobson

Date	Code	User	Judge
4/16/2007	LETT	MORELAND	Letter to Judge from Fred Palmer - Re: Appeal - Reply Brief
5/7/2007	HRSC	CMOORE	Hearing Scheduled (Hearing Scheduled 06/04/2007 02:00 PM) Oral Argument
		CMOORE	Notice of Hearing
5/9/2007	NOHG	MORELAND	Notice Of Hearing
5/10/2007	HRSC	MORELAND	Hearing Scheduled (Motion to Dismiss 06/04/2007 02:00 PM)
6/4/2007	CTLG	CMOORE	Court Log-Tape #07-503 and #07-504
	INHD	CMOORE	Hearing result for Motion to Dismiss held on 06/04/2007 02:00 PM: Interim Hearing Held
	INHD	CMOORE	Hearing result for Hearing Scheduled held on 06/04/2007 02:00 PM: Interim Hearing Held Oral Argument
8/9/2007	GRNT	CMOORE	Hearing result for Motion to Dismiss held on 06/04/2007 02:00 PM: Motion Granted
	ORDR	CMOORE	Decision on Appeal
8/10/2007	RMDC	BRACKETT	Remanded From District Court
	CHJG	BRACKETT	Change Assigned Judge
8/13/2007		TURNBULL	Affidavit and Notice of Failure to Pay - Overdue - Step 1, Failure to Pay Fines and Fees - Charge # 1, Driving Under The Influence Appearance date: 8/27/2007 - Mail by Error
9/20/2007	HRSC	PEINE	Hearing Scheduled (Hearing Scheduled 10/10/2007 02:45 PM) Hearing on Remand
		PEINE	Notice of Hearing
9/26/2007	MOTN	ADLER	Motion to vacate & continue remand hrg
9/28/2007	ORDR	PEINE	Order Vacating & Continueing Remand hearing
	CONT	PEINE	Continued (Hearing Scheduled 10/15/2007 11:00 AM) Hearing on Remand
10/3/2007	RQFD	ADLER	Supp Request For Discovery
10/11/2007	SUPR	HAYNES	Supplemental Response To Request For Discovery through William Herrington
10/15/2007	CTLG	PEINE	Court Log- #07-44
	INHD	PEINE	Interim Hearing Held
	CONT	PEINE	Continued (Hearing Scheduled 10/22/2007 02:00 PM) Hearing on Remand
		PEINE	Notice of Hearing
10/17/2007	RRFD	ADLER	Supp Response To Request For Discovery
10/18/2007	RRFD	ADLER	Supp Response To Request For Discovery
10/22/2007	CTLG	PEINE	Court Log- #07-49

State of Idaho vs. Dan Stanley Jacobson

Date	Code	User	Judge
10/22/2007	HRHD	PEINE	Hearing result for Hearing Scheduled held on 10/22/2007 02:00 PM: Hearing Held Hearing on Remand
	EXHB	PEINE	Exhibit List
11/19/2007	ORDR	PEINE	Order on Remand and
	ORDR	PEINE	Order Denying Motions to Suppress and Dismiss and
	ORDR	PEINE	Order Reinstating Judgment and Vacating Stay
	STAT	PEINE	STATUS CHANGED: closed pending clerk action
12/5/2007		HAYNES	Miscellaneous Payment: Personal Copy Fee Paid by: Jacobson, Dan Stanley Receipt number: 0384975 Dated: 12/5/2007 Amount: \$4.00 (Cash)
	MOTN	ADLER	Motion to vacate order denying motn to dismiss,order reinstating jdmt and order vacating stay and notice of motn
	HRSC	ADLER	Hearing Scheduled (Motion 12/21/2007 02:00 PM) to vacate order denying motn to dismiss,order reinstating jdmt and order vacating stay
12/12/2007	NTOA	BRACKETT	Notice Of Appeal
	APDC	BRACKETT	Appeal Filed In District Court
	CHJG	BRACKETT	Change Assigned Judge
12/17/2007	ORDR	PEINE	Order to vacate 1-4-08 hrg
12/21/2007	CTLG	PEINE	Court Log- #07-77
	HRHD	PEINE	Hearing Held
12/24/2007	CONT	PEINE	Continued (Motion 01/04/2008 09:30 AM) to vacate order denying motn to dismiss,order reinstating jdmt and order vacating stay
		PEINE	Notice of Hearing
12/26/2007	LETT	PEINE	Letter from Mr. Palmer - req continue hearing
12/27/2007	CONT	PEINE	Continued (Motion 01/07/2008 01:30 PM) to vacate order denying motn to dismiss,order reinstating jdmt and order vacating stay
		PEINE	Notice of Hearing
12/31/2007	ESTM	BRACKETT	Estimate Of Transcript Cost-Oct 12, 2007 \$127.00-Val
1/7/2008	STIP	PEINE	Stipulation (to continue)
	ORDR	PEINE	Order (to continue)
	CONT	PEINE	Continued (Motion 01/14/2008 02:00 PM) to vacate order denying motn to dismiss,order reinstating jdmt and order vacating stay
		PEINE	Notice of Hearing
1/14/2008	CTLG	PEINE	Court Log- #08-03

State of Idaho vs. Dan Stanley Jacobson

Date	Code	User	Judge
1/14/2008	EXHB	PEINE	Exhibit List
	INHD	PEINE	Hearing result for Motion held on 01/14/2008 02:00 PM: Interim Hearing Held Motion to Dismiss
1/15/2008	DENY	PEINE	Hearing result for Motion held on 01/14/2008 02:00 PM: Motion Denied - motn to dismiss
1/16/2008	BONT	BRACKETT	Bond Posted for Transcript (Receipt 387059 Dated 1/16/2008 for 127.00)
1/17/2008	NTOA	BRACKETT	Notice Of Appeal
	APDC	BRACKETT	Appeal Filed In District Court
1/18/2008	ORDR	TURNBULL	Order - The court DENIES DEFENDANT's Motion to dismiss
	ORDR	TURNBULL	Stay Order
1/29/2008	ESTM	BRACKETT	Estimate Of Transcript Cost of Jan 14, 2008 hearing \$98.00-Fred Palmer
1/31/2008	BONT	BRACKETT	Bond Posted for Transcript (Receipt 387768 Dated 1/31/2008 for 98.00)
5/16/2008	NLT	BRACKETT	Notice Of Lodging Transcript On Appeal-Val Larson
	TRAN	BRACKETT	Transcript Filed by Val Larson of Jan 14, 2008 Mtn to Dismiss hearing; Dec 21, 2007 Mtn to Vacate Orders; 10/22/07 Hearing on Remand
	MISC	BRACKETT	Invoice from Valerie Larson for transcripts Oct 22, 2007 49 pgs @ 3.25-159.25 Dec 21, 2007 9 pgs @ 3.25-29.25 Jan 14, 2008 50 pgs @ 3.25 Total due \$351.00
	BNDV	BRACKETT	Bond Converted (Transaction number 307204 dated 5/16/2008 amount 127.00)
	BNDV	BRACKETT	Bond Converted (Transaction number 307205 dated 5/16/2008 amount 98.00)
	NLT	BRACKETT	Notice Of Lodging Transcript On Appeal
	MISC	BRACKETT	Balance due from Fred Palmer on transcripts \$126.00
5/21/2008	BNDC	MORELAND	Bond Posted - Cash (Receipt 393837 Dated 5/21/2008 for 126.00)Balance due on Transcript
	BNDV	BRACKETT	Bond Converted (Transaction number 307212 dated 5/21/2008 amount 126.00)
6/9/2008	NST	BRACKETT	Notice Of Settling Transcript On Appeal
6/24/2008	ORDR	MORELAND	Order Establishing Briefing Schedule on Appeal
8/1/2008	BREF	BRACKETT	Appellant Brief-Fred Palmer
8/27/2008	BREF	ADLER	Respondents Brief
10/3/2008	HRSC	CMOORE	Hearing Scheduled (Oral Argument on Appeal 11/20/2008 09:30 AM)
		CMOORE	Notice of Hearing

State of Idaho vs. Dan Stanley Jacobson

Date	Code	User		Judge
11/20/2008	STIP	OPPELT	Stipulation	Steve Verby
	ORDR	OPPELT	Order Continuing Oral Argument	James R. Michaud
	CONT	OPPELT	Hearing result for Oral Argument on Appeal held on 11/20/2008 09:30 AM: Continued	James R. Michaud
11/21/2008	HRSC	OPPELT	Hearing Scheduled (Oral Argument on Appeal 02/02/2009 01:30 PM)	Steve Verby
		OPPELT	Amended Notice of Hearing	Steve Verby
2/2/2009	CTLG	PHILLIPS	Hearing result for Oral Argument on Appeal held on 02/02/2009 01:30 PM: Court Log- 09-036	Steve Verby
	DCHH	PHILLIPS	Hearing result for Oral Argument on Appeal held on 02/02/2009 01:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: none given	Steve Verby
	DENY	PHILLIPS	Hearing result for Oral Argument on Appeal held on 02/02/2009 01:30 PM: Motion Denied	Steve Verby
2/13/2009	ORDR	PHILLIPS	Decision on Appeal	Steve Verby
	STAT	PHILLIPS	STATUS CHANGED: closed pending clerk action	Steve Verby
2/18/2009	BNDV	PHILLIPS	Bond Converted (Receipt number 409968 dated 2/18/2009 amount 500.00)	Steve Verby
3/9/2009	APSC	MUELLER	Appealed To The Supreme Court	Steve Verby
	NTOA	MUELLER	Notice Of Appeal	Steve Verby
3/10/2009	CHJG	MUELLER	Change Assigned Judge	Idaho Supreme Court
	CCOA	MUELLER	Clerk's Certificate Of Appeal	Idaho Supreme Court
3/23/2009	BONT	PHILLIPS	Bond Posted for Transcript (Receipt 411938 Dated 3/23/2009 for 97.50)	Idaho Supreme Court
	BNDC	PHILLIPS	Bond Posted - Cash (Receipt 411939 Dated 3/23/2009 for 200.00)	Idaho Supreme Court
3/24/2009	ORDR	MUELLER	Order Conditionally Dismissing Appeal due to non payment of fees-fees must be paid by 4/8/09	Idaho Supreme Court
		MUELLER	Clerk's Cert filed at ISC/Docket No. 36257	Idaho Supreme Court
	CCOA	MUELLER	Amended Clerk's Certificate Of Appeal to ISC	Idaho Supreme Court
4/3/2009		MUELLER	Notice of Appeal filed at ISC w/due dates Clerk's Record due to ISC by 06/02/2009	Idaho Supreme Court
4/6/2009		MUELLER	Duplicate Notice sent by ISC w/due dates	Idaho Supreme Court
4/14/2009	NLT	MUELLER	Notice Of Lodging Transcript On Appeal by Cindy Simmons of Motion to Dismiss and Oral Argument of June 4, 2007 (43 pages)	Idaho Supreme Court
4/23/2009	NLT	MUELLER	Notice Of Lodging Transcript On Appeal by Val Larson of Hearing held February 2, 2009 (26 pages)	Idaho Supreme Court
4/28/2009	BNDV	MUELLER	Bond Converted (Transaction number 308894 dated 4/28/2009 amount 84.50)	Idaho Supreme Court

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, Idaho 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2004 DEC 30 P 4: 37

MARIE SCOTT  
CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO,	)	Citation NO. 35170
	)	
Plaintiff,	)	Case No. CR-2004- <u>9931</u>
	)	
vs.	)	NOTICE OF APPEARANCE, PLEA OF
	)	NOT GUILTY AND REQUEST FOR
DAN S. JACOBSON,	)	JURY TRIAL
	)	
Defendant.	)	

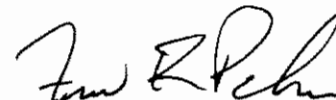
TO: Lori Meulenberg, Sandpoint City Attorney, and the above-entitled Court

YOU WILL PLEASE TAKE NOTICE that the above defendant is henceforth represented by Fred R. Palmer, Attorney at Law, 106 West Superior Street, Sandpoint, ID 83864. All pleadings and notices herein should be forwarded thereto.

YOU ARE FURTHER NOTIFIED that the above defendant, by and through his attorney, enters a plea of NOT GUILTY to the charges of Driving Under the Influence, a violation of Idaho Code §18-8004, as alleged herein.

YOU ARE FURTHER NOTIFIED that the above defendant, by and through his attorney, hereby requests that the aforementioned charges be set for trial by jury forthwith.

DATED this 30 day of Dec, 2004.



Fred R. Palmer, Attorney for Defendant

FRED R. PALMER  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983

NOTICE OF APPEARANCE, PLEA OF NOT GUILTY AND REQUEST FOR JURY TRIAL, Page 1

I hereby certify that a true and correct copy of the foregoing was ☒ hand delivered, ☐ mailed, postage prepaid, ☐ faxed, this 30 day of Dec., 2004 to:

Lori Meulenberg  
Sandpoint City Attorney  
Courthouse Mail  
Bonner County Courthouse

Arthur J. MacKinnon

**FRED R. PALMER**

ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983

NOTICE OF APPEARANCE, PLEA OF NOT GUILTY AND REQUEST FOR JURY TRIAL, Page 2



SANDPOINT POLICE DEPT.  
District Court 1 (F) 265-1432 x 204

IDAHO UNIFORM CITATION

IN THE DISTRICT COURT OF THE 1ST  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF  
STATE OF IDAHO

35170  
JAN - 4 A 10:51  
BONNER  
FIRST JUDICIAL DISTRICT

COMPLAINT AND SUMMONS

☐ Infraction Citation

☒ OR  
Misdemeanor Citation

CLERK DISTRICT COURT

☐ Accident Involved

DEPUTY

35170

JAKOBSON

vs.

Last Name

DAN

First Name

Middle Initial

IPUC #

USDOT TK Census #

☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other

☐ GVWR 26001 + ☐ 16 + Persons ☐ Placard Hazardous Materials DR# 01-018038

Home Address 4079 BOTTLE BAY RD, SAGE, ID 83860; P.O. Box 915, SANDPOINT, 83864

Business Address

Ph #

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above-named Defendant,

DL or SS# OK 3158164

State ID

Sex: ☒ M ☐ F

Height 5'10" Wt. 205 Hair BLN Eyes GRN DOB 11/25/53

Veh. Lic. # 3603F State ID Yr. of Vehicle 2003 Make FORD

Model F150 Color GRN

Did commit the following act(s) on DECEMBER 29 20 04 at 0045 o'clock A M.

Vio. #1 DRIVING UNDER THE INFLUENCE OF 18-8004

5 M.I. AN ALCOHOLIC BEVERAGE (B.A.C. > .08) Code Section

Vio. #2 Code Section

Location 2ND + 1ST CHURCH

Hwy. Mp. BONNER County, Idaho.

12/29/04 T. FRY SP32 SPD

Date Officer/Party Serial #/Address Dept.

Date Witnessing Officer Serial #/Address Dept.

THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to appear before the Clerk of the Magistrate's Court of the

District Court of BONNER County, SANDPOINT, Idaho,

located at 215 S. FIRST AVENUE on the day of

, 20 , at o'clock M.

I acknowledge receipt of this summons and I promise to appear at the time indicated.

JAN CUSTODY

Defendant's Signature

I hereby certify service upon the defendant personally on , 20

Officer

NOTICE: See reverse side of your copy for PENALTY and COMPLIANCE instructions

COURT COPY VIOLATION #1

DAN

JAKOBSON

Defendant's Name:

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT  
2005 JAN -4 A 10:51

MARIE SCOTT  
CLERK DISTRICT COURT  
DEPUTY 37

COURT CASE NUMBER CR2004-993  
PROBABLE CAUSE AFFIDAVIT IN SUPPORT  
OF ARREST

THE STATE OF IDAHO,

Plaintiff,

Jacobson, Dan Stanley  
Defendant.

DOB [REDACTED]  
SSN [REDACTED]  
DL# [REDACTED]  
State [REDACTED]

State of Idaho,

County of Bonner

ss

I, Officer Timothy Fry, the undersigned, being first duly sworn on oath, deposes and says that:

1. I am a peace officer employed by the Sandpoint Police Department.
2. The defendant was arrested on 12/29/04 at 0101 ☒ AM ☐ PM for the crime of driving while under the influence of alcohol, drugs or any other intoxicating pursuant to Section 18-8004 Idaho Code. Second or more DUI offense in the last five years? ☐ YES ☒ NO ☐ FELONY ☒ MISDEMEANOR
3. Location of Occurrence: Second and Church
4. Identified the defendant as: (print name) Jacobson, Dan Stanley by: (check box)  
☐ Military ID ☐ State ID Card ☐ Student ID Card ☒ Drivers License ☐ Credit Cards  
☐ Paperwork found ☐ Verbal ID by defendant  
☐ Witness \_\_\_\_\_ identified defendant.  
☐ Other
5. Actual physical control established by: ☒ Observation by affiant ☐ Observation by Officer  
☐ Admission of Defendant to \_\_\_\_\_, ☐ Statement of Witness:  
☐ Other
6. I believe that there is probable cause to believe the defendant committed such crime because of the following facts:

(NOTE: You must state the source of all information provided below. State what you observed and what you learned from someone else, identifying that person):

# PROBABLE CAUSE FOR STOP AND ARREST:

I observed Jacobson turning left from Church onto Second Avenue. While making his turn, he nearly hit the right hand curb, then narrowly missed a parked car while approaching Pine Street. Jacobson failed to come to a complete stop at Second and Pine, turned left, and failed to come to a stop at First and Pine. Jacobson was travelling at a high rate of speed, and I was unable to catch up to him until the the center of the Long Bridge, where I paced him at 83 MPH. I activated my overhead lights several hundred feet North of Lakeshore Drive. After activating my siren, Jacobson stopped in the parking lot of Bill Jones Distributors. I contacted Jacobson, who identified himself by his Idaho Driver's License. In talking to him, I could smell the odor of an alcoholic beverage coming from within the vehicle, and Jacobson admitted to consuming an alcoholic beverage. I performed field sobriety evaluations on Jacobson, which he failed. I placed Jacobson under arrest for DUI, and transported him to detention. At detention, I checked Jacobson's mouth and saw it was clear, and began the 15 minute observation period. I then read Johnson the A.L.S. suspension advisory form, waited for the 15 minute waiting period to expire, and Johnson agreed to submit a breath alcohol test. The test registered Johnson's blood alcohol content as .170 / .181 for the two samples respectively. I booked Johnson into the jail on D.U.I. (I.C. 18-8004).

That at said time and place (Officer Timothy Fry) the Affiant requested the above named respondent to submit to evidentiary test for alcohol concentration by (describe circumstances of request): breath test, and that thereafter the above named respondent ( ☒ Agreed ☐ Refused ) to submit to an evidentiary test (describe circumstance ) said "yes" and that reason thereof, the Affiant seized the drivers license of the above named respondent and is herewith submitting the same to the Court and Department of Transportation for suspension under I.C. 18-8002 & 18-8002A.

## D.U. I. NOTES

Odor of alcoholic beverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Admitted drinking alcoholic beverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Slurred speech	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Impaired memory	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Glassy/bloodshot eyes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other		

## Sobriety Tests

Gaze Nystagmus	<input type="checkbox"/> Pass	<input checked="" type="checkbox"/> Fail
Walk & Turn	<input type="checkbox"/> Pass	<input checked="" type="checkbox"/> Fail
One Leg Stand	<input type="checkbox"/> Pass	<input checked="" type="checkbox"/> Fail

Accident Involved	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Injury	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Drugs Suspected ☐ Yes ☒ No  
Reason Drugs are Suspected

Drug Recognition Evaluation Performed ☐ Yes ☒ No

Defendant was tested for alcohol concentration, drugs or other intoxicating substances. Prior to testing, defendant was substantially informed of the consequences of refusal and failure of the test as required by Section 18-8002 and 18-8002A, Idaho Code. The breath test was performed in compliance with Section 18-8004(4) Idaho Code and the standards and methods adopted by the Department of Law Enforcement.

BAC: .170 / .181 by: ☒ Breath ☐ Blood ☐ Urine ☐ Refusal ☒ Intoxilyzer 5000  
☐ Alco Sensor Instrument Serial #:68-011905

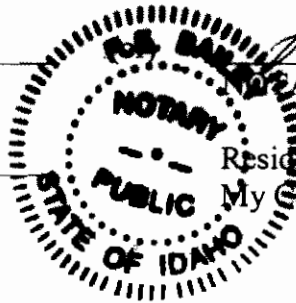
Name of person administering breath test: Timothy J. Fry Date Certification Expires:04-31-2006

Dated: 12/29/04 Signed: [Signature]  
(affiant)

Subscribed and sworn to before me on 12-29-04  
(Date)

PERSON AUTHORIZED TO  
ADMINISTER OATHS.

Title: \_\_\_\_\_



R. E. Bailey  
NOTARY PUBLIC FOR IDAHO

Residing at: Sandpoint ID

My Commission expires: 06-09-09

12/29/2004  
08:35

Sandpoint Police Department  
Arrest Information:

222  
Page: 1

Booking Number: 04-002630

InAct

Name Number: 12867 Dan Stanley Jacobson

Arrest Number: 1

Reference: Cite #35170

Time/Date of Arrest: 01:01:00 12/29/2004

Arrest Officer: Fry, T

Location of Arrest: Bottle Bay & Hwy 95

Arrest Agency: SPD

Arrest Area: BC

Tracking Number: 04-018038

Judicial Age Status: A

Age at Arrest: 51

Arrest Type: VIEW Arrest without Warrant

Arrest Disposition: NA Non-Juvenile

Pre-Sentence Class: PM Pre Sentence Misdemeanor

Arrest Circumstances: UARM \_\_\_\_\_

Arrest Narrative:

18-8004 DUI \$500.00 bond

-----  
Posted Cash Bond \$500.00

=====

Arrest Circumstances Detail:

Arrest Circumstances Detail

Seq Code Description

1 UARM Unarmed

12/29/2004  
13:59

Sandpoint Police Department  
LAW Incident Table:

336  
Page: 1

Incident Number: 04-018038

Nature: Traffic offense Case Number: \_\_\_\_\_ Image: \_\_\_\_\_  
Addr: Hwy 95 at Bottle Bay Rd Area: SC City of Sandp>  
City: Sandpoint ST: ID Zip: 83864 Contact: Fry, T

+ - Complainant: \_\_\_\_\_

Lst: \_\_\_\_\_ Fst: \_\_\_\_\_ Mid: \_\_\_\_\_  
DOB: \_\_\_\_/\_\_\_\_/\_\_\_\_ SSN: \_\_\_\_-\_\_\_\_-\_\_\_\_ Adr: \_\_\_\_\_  
Rac: \_\_\_\_ Sx: \_\_\_\_ Tel: (\_\_\_\_) \_\_\_\_-\_\_\_\_ Cty: \_\_\_\_\_ ST: \_\_\_\_ Zip: \_\_\_\_\_

Offense Codes: DUI \_\_\_\_\_ Reported: TOFF Observed: \_\_\_\_\_

Circumstances: \_\_\_\_\_

Rspndg Officers: Fry, T Bailey R  
Rspnsbl Officer: Fry, T Agency: SPD CAD Call ID: 129665  
Received By: Earls, M Last RadLog: 02:24:53 12/29/2004 CMPLT  
How Received: O Officer Clearance: RR Report Received by R>  
When Reported: 00:45:05 12/29/2004 Disposition: 2 Disp Date: 12/29/2004  
Occurrd between: 00:45:05 12/29/2004 Judicial Sts: PROS Report to prosecutor  
and: 01:01:30 12/29/2004 Misc Entry:

MO: \_\_\_\_\_

Narrative: (See below) \_\_\_\_\_ +

Supplement: \_\_\_\_\_

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
AR	04-002630	12/29/2004	Driving under the influence	*Arrest/Offense
NM	12867	/ /	Jacobson, Dan Stanley	Offender
CT	35170	12/29/2004	Driving under the influence	Custody/Jacobson
VH	68500	/ /	GRN 2003 FORD F150 ID	Vehicle involved
CA	129665	12/29/2004	00:45 12/29/2004 Traffic offen	*Initiating Call

LAW Incident Offenses Detail:

Offense Codes

Seq	Code	Amount
1	DUI DUI Alcohol or Drugs	0.00

LAW Incident Responders Detail

Responding Officers

Seq	Name	Unit
1	Fry, T	SP32
2	Bailey R	SP16

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
02:24:53 12/29/2004	1	SP16	CMPLT	SC	SPD	incid#=04-018038 Completed cal
02:24:53 12/29/2004	1	SP32	CMPLT	SC	SPD	incid#=04-018038 Completed cal
01:22:11 12/29/2004	1	SP16	ARRVD	SC	SPD	incid#=04-018038 Arrived at de

Time	Date	Typ	Unit	Code	Zone	Agnc	Description
01:22:11	12/29/2004	1	SP32	ARRVD	SC	SPD	incid#=04-018038 Arrived at de
01:20:45	12/29/2004	1	SP32	14	SC	SPD	code 4
01:10:57	12/29/2004	1	SP32	14	SC	SPD	vehicle has been secured and l
01:10:11	12/29/2004	1	SP16	ENRT		SPD	incid#=04-018038 Enroute to de
01:10:11	12/29/2004	1	SP32	ENRT		SPD	incid#=04-018038 Enroute to de
01:02:59	12/29/2004	1	SP32	14	SC	SPD	10-95 with one at 01:01 hours
01:01:49	12/29/2004	1	SP32	ARRVD		SPD	Traffic Stop call=41
00:45:55	12/29/2004	1	SP16	ARRVD		SPD	incid#=04-018038 Arrived on sc

Narrative:

Dispatch Summary Statement: Officer arrested Dan S Jacobson, dob [REDACTED]  
from a traffic stop for DUI.

OFFENSE: #04-018038  
DUI

SUSPECT: Name: Dan Jacobson  
DOB: [REDACTED]  
SSN: [REDACTED]  
Address: 4079 Bottle Bay RD/PO Box 905  
Phone: 265-4125

VICTIM: Name:  
DOB:  
SSN:  
Address:  
Phone:

WITNESS: Name:  
DOB:  
SSN:  
Address:  
Phone:

AUDIO: Yes  
VIDEO: 06-73  
CITATION #: 35170  
OFFICER(S) INVOLVED: Officer Fry  
Sergeant Bailey  
Deputy McClelland

OVERVIEW:

On 12-29-04 at about 0045 hours, I made a traffic stop at Highway 95 and Bottle Bay Road. I subsequently arrested the driver, Dan Jacobson, for DUI and booked him into the jail.

NARRATIVE:

On 12-29-04 at about 0045 hours, I was traveling southbound on Second Avenue towards Church when I saw a green Ford F150 truck make a left turn onto Second Avenue from Church in front of me. I saw the truck nearly hit the right curb and then nearly hit a parked vehicle. The truck then made a left turn onto Pine Street without stopping and a right turn onto First Avenue from Pine without stopping. I proceeded to follow him passing another Ford truck in order to catch up with him. I then attempted to catch up with him and finally did in the middle of the Long Bridge heading southbound. I was able to use my radar to pace his



speed at 83 mph.

I activated my overhead lights north of Lakeshore Drive with plenty of space for him to pull into at Lakeshore Drive. He continued, apparently unaware that I was behind, and began to turn as though he was going to turn onto Bottle Bay Road. I activated my siren and he pulled into the Bill Jones Distributors parking lot.

I contacted the driver and told him the reason I stopped him was because he failed to stop at a couple stop signs and he failed to use his turn signal at First and Pine. He immediately started getting into his wallet and dropped several cards onto his lap. He grabbed his driver's license and handed it to me. I could smell the distinct odor of an alcoholic beverage coming from the vehicle. I asked him for his registration and proof of insurance.. He began looking through his day planner for that information. He told me he was coming from Schwietzer and he had been up there skiing. When I verified that he was telling me he was coming directly from there, he said yes.

While he was looking through his day planner, he stopped and asked me, "What do you need?" I reminded him that I needed his registration and proof of insurance. I saw him take out a wad of papers that included several registration forms and several insurance forms. He handed me his proof of insurance and began to put the paperwork away. I reminded him that I needed to see his registration as well.

I was able to identify the driver as Dan Jacobson by his Idaho driver's license. I asked Jacobson how much he had to drink that night. He told me two beers. I asked him to wait in his vehicle while I returned to my patrol vehicle.

I had dispatch run Jacobson's driver's status and informed them I would be out on field sobriety tests with Jacobson.

I recontacted Jacobson and asked him to step out of his vehicle and talk to me. As Jacobson was leaving his vehicle, I noticed he stumbled and it appeared he might fall. When he reached the back of his vehicle, I asked him if he had any weapons on him. He said he didn't. I asked him if I could check. I then patted him down for weapons, finding none.

I asked Jacobson how much he had to drink that evening. He again said he had two beers. He told me he had these beers two hours ago at Eichardts. I asked him where he was coming from and where he had been. He said, Eichardts. I reminded Jacobson that he told me he had been at Schweitzer. I asked him when he had been at Schweitzer. He said from about 1000 hours to 1400 hours that day.

I asked Jacobson if he was under a doctor's care for anything. He said, No. I also asked him if he was on any prescription medications. He said, No.

I asked Jacobson what he did for a living. He said he bought and sold timber contracts. I asked him if he had any back or leg problems. He said his left knee was missing some cartilage. I did verify with Jacobson that he did walk and ski and he could get around all right. He agreed with me. I asked Jacobson if he was wearing contacts. He said,

No.

I had Jacobson stand on the beam of my flashlight with his feet together and his arms down at his sides while facing my patrol car. Jacobson had difficulty understanding what I meant by putting his feet together. He initially didn't put his feet together. He put them closer but never actually put them together. I asked Jacobson if he could see the tip of my finger. He told me my flashlight was in his eyes so I readjusted my flashlight and asked again. He said he could see the tip of my finger.

I told Jacobson to watch the tip of my finger. He was unable to do that initially and it took large amounts of concentration to focus on my finger.

I explained to Jacobson that I was going to pass my finger across his field of vision several times and I wanted him to watch it with his eyes only, not moving his head. I asked him if he understood. He said, Yes.

Jacobson had a great deal of difficulty following my finger and when he was able to follow my finger, he also moved his head. Jacobson then readjusted his body position. I had to remind him to put his feet together and his hands at his sides.

Since Jacobson had difficulty keeping his head still, I suggested he use his hands to brace his head to keep it from moving, which he did. I again verified that he could see the tip of my finger. I then began moving it back and forth in front of his field of vision. I was able to perform successfully the horizontal gaze nystagmus evaluation.

I noted that Jacobson had lack of smooth pursuit in both eyes, he had nystagmus at maximum deviation in both eyes and he had onset of nystagmus prior to 45 degrees in both eyes.

I then performed vertical nystagmus and got no nystagmus vertically in his eyes.

I explained to Jacobson that I was going to have him perform more evaluations and the next two evaluations were continuous evaluations. I told him that meant if at any time he stopped the evaluation, he was to continue where he left off. I told him that I also didn't want him start any evaluation until I told him to. I asked him if he understood. He said, Yes.

I explained to Jacobson that I wanted him to put his right foot in front of his left foot, touching heel to toe and put his arms at his sides. He put his right foot to the front and to the right of his left foot and put his arms close to his sides but did not touch heel to toe. I asked him to touch heel to toe. He got closer and touched the heel of his right foot to the side of the toe of his left foot.

I explained that when I told him to begin, I wanted him to take nine steps forward along an imaginary line. I then demonstrated several steps for him so he would understand. I explained that while taking the steps he needed to count each step out loud, touch heel to toe and keep his arms down at his sides. I told him that he was to take a series of nine steps and when he reached his ninth step, I wanted to pivot on his

from foot. At this point, Jacobson began laughing. I asked him if he was listening. He stopped laughing. I told him that I wanted him to take a series of nine steps back along an imaginary line while touching heel to toe, counting out loud and keeping his hands at his sides. I then demonstrated the return steps. I asked Jacobson if he had any questions for me. Before I finished, he began taking steps forward.

Jacobson started the test too soon, he did not touch heel to toe on a single step, he did not maintain a straight line, his arms were not down at his sides, he made an improper turn, he took nine steps back not in a straight line and again did not touch heel to toe or keep his arms at his sides.

I told Jacobson for the next evaluation, I wanted him to stand with his feet together and his arms down at his sides. I told Jacobson that when I told him to begin, I wanted him to lift the foot of his choosing six inches off the ground, point his toe, look at his toe and count by 1000s for 30 seconds or until I told him to stop. I then demonstrated the evaluation on Jacobson. Jacobson stopped me and said he could not do that because of the cartilage in his left knee. I reminded Jacobson that he could use the foot of his choosing. Jacobson suggested he could leave his right leg up and stand on his left leg and raise his hands in the air. I told him it would be better if he kept his arms at his sides as that was the way the test was to be done. I asked Jacobson if he understood the test or wanted me to explain again. He said no and told me that I wanted him to walk with his feet six inches off the ground. I voluntarily explained the evaluation for him one more time. Jacobson told me that he doubted he could do the test but would try.

Jacobson lifted his right foot off the ground, standing on his left leg. He raised his arms in the air and counted by 1000s. When he reached 1004, he began to fall over to the left and had to put his foot down. I suggested to Jacobson that he try the other leg. He tried the other leg and again raised both arms in the air. He did not raise his foot more than one inch off the ground. He counted by 1000s and reached 1011 where he stopped.

I asked Jacobson how far he got in school. He said he reached his sophomore year in college. I asked him if he knew the alphabet and how to count. He said, Yes. I asked Jacobson to stand with his feet together and his arms down at his sides. I asked him to close his eyes and tilt his head back slightly. I then asked him to recite the alphabet from A to Z without singing.

Jacobson recited, A, B, C, D, H, F, H, I, J, G, and trailed off. He told me spelling was not his preference and asked me if he could try math. I believed he meant math and asked, "Try math?" He said, Yes.

I told him that all I wanted him to do was count. I asked him to stand with his feet together, his hands at his sides with his head tilted slightly back and his eyes closed. I told him to count from 88 to 66 and back up to 88. Before I asked Jacobson if he understood, he began counting down.

He counted 88, 87, 86, 85, 84, 83, 82, 81, 80, 80, 79, 79, 78, 76, 77, 78, and then gave up.

At this time, I advised Jacobson I believed he had too much to drink to be driving. I placed him under arrest for DUI. I performed a search of his person and put everything in his pockets in a brown paper bag. I placed handcuffs on him, checking for proper fit and double locking them. I then placed him in the rear of my patrol vehicle.

I, Sergeant Bailey and Deputy McClelland then performed a search incident to arrest of Jacobson's vehicle, finding nothing. At his request, I moved his vehicle further into the parking lot and parked it there. I informed him that if Bill Jones wanted the vehicle moved, he could have it towed. He told me that he was friends with Bill Jones and he wished the vehicle to be left there. I secured the vehicle and took the skis out of the bed of the vehicle and placed them in the cab. I then locked his vehicle and brought the keys with us to the jail.

I transported Jacobson to the jail. Upon arrival, I turned him over to detention staff. They performed a search of his person. During the search, I observed them check his mouth. At that time, I began my 15 minute waiting period.

I then escorted him to the intoxilyzer room. I read him the notice of suspension form. I requested he submit to a breath test, which he did. His BAC results were .170/.181. I then informed him that I would be booking him for DUI.

I completed Citation #35170, charging Jacobson with DUI. I also completed a temporary driving permit and prebooking form. I completed the necessary paperwork and cleared the jail.

OFFICER FRY

tr

ATTACHMENTS:

ALS Form  
Affidavit  
Driver's License  
Citation  
BAC Results  
Driving Record  
Prebooking Form

SANDPOINT POLICE DEPT.  
District Court 1 (208) 265-1432 x 204

35170

IDAHO UNIFORM CITATION

IN THE DISTRICT COURT OF THE 1ST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
STATE OF IDAHO

35170

JAKOBSON

vs.

Last Name

DAN

First Name

S

Middle Initial

COMPLAINT AND SUMMONS

☐ Infraction Citation

OR

☒ Misdemeanor Citation

☐ Accident Involved

IPUC # \_\_\_\_\_ USDOT TK Census # \_\_\_\_\_  
☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other  
☐ GVWR 28001 + ☐ 18 + Persons ☐ Placard Hazardous Materials DR# 24-018238  
Home Address 407 BOTTLE BAY RD, SAGE, ID 83840, P.O. Box 905, SANDPOINT, 83864  
Business Address \_\_\_\_\_ Ph # \_\_\_\_\_

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above-named Defendant,

DL or SS# OK 3158164 State ID Sex: ☒ M ☐ F  
Height 5'10" Wt. 205 Hair BLN Eyes GRN DOB 11/25/53  
Veh. Lic. # 3603F State ID Yr. of Vehicle 2003 Make FORD  
Model F150 Color GRN

Did commit the following act(s) on DECEMBER 29 20 04 at 0045 o'clock 4 M.

Vio. #1 DRIVING UNDER THE INFLUENCE OF 18-8004

AN ALCOHOLIC BEVERAGE (B.A.C. > .08)

Code Section

Vio. #2 \_\_\_\_\_

Code Section

Location 2ND + 1ST CLWRCH

Hwy. \_\_\_\_\_ Mp. \_\_\_\_\_ BONNER County, Idaho.

Date 12/29/04 Officer/Party T. FRY Serial #/Address SP32 Dept. SPD

Date \_\_\_\_\_ Witnessing Officer \_\_\_\_\_ Serial #/Address \_\_\_\_\_ Dept. \_\_\_\_\_

THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to appear before the Clerk of the Magistrate's Court of the

District Court of BONNER County, SANDPOINT, Idaho,

located at 215 S. FIRST AVENUE on the 29 day of

12, 20 04, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

I acknowledge receipt of this summons and I promise to appear at the time indicated.

DAN JAKOBSON

Defendant's Signature

I hereby certify service upon the defendant personally on \_\_\_\_\_, 20 \_\_\_\_\_

Officer

NOTICE: See reverse side of your copy for PENALTY and COMPLIANCE Instructions.

COURT COPY VIOLATION #1

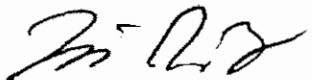
VERSION 1

Alexander Clark Business Forms - Boise, Idaho - (208) 322-0611

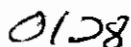
CMI INC  
INTOXILYZER - ALCOHOL ANALYZER  
MODEL 5000EN SN 68-011905  
12/29/2004 SOLUTION LOT NO. 0000004803

SUB NAME=JACOBSON, DAN, S  
SUB DOB =11/25/53  
O.L.N.=ID/QK315816A  
OPER NAME=FRY, TIMOTHY, J  
ARREST AGENCY=0903

TEST	BrAC	TIME
AIR BLANK	.000	01:44 PST
INTERNAL STANDARDS	PASSED	01:44 PST
AIR BLANK	.000	01:44 PST
SIMULATOR TEMPERATURE IN RANGE.		
SIM CHK #0003	.076	01:44 PST
ACCEPTABLE		
AIR BLANK	.000	01:45 PST
SUBJECT TEST	.170	01:47 PST
AIR BLANK	.000	01:47 PST
SUBJECT TEST	.181	01:50 PST
AIR BLANK	.000	01:50 PST



\_\_\_\_\_  
OPERATORS SIGNATURE



\_\_\_\_\_  
TIME FIRST OBSERVED

CLASS D **Iowa** DRIVER LICENSE

NUMBER: **QK315816A**  
ISSUED: 10/24/2003

EXPIRES: 11/25/2007

RSTS:  
ENDOR:



JACOBSON, DAN STANLEY  
4079 BOYYLE BAY RD  
PO BOX 905  
EAGLE ID 83600



**SONNER COUNTY DETENTION  
PRE-BOOKING FORM**

Booking # \_\_\_\_\_

Date 12/29/04

Name ID # \_\_\_\_\_

Officer's Case # 04-018038

**ARRESTEE INFORMATION:**

Name JAKOBSON DAN STANLEY  
Last First Middle

SS# 532 160 7685 DOB [REDACTED] Home Phone \_\_\_\_\_

Address 4079 BOTTLE BAY RD, SAGLE, ID 83860; P.O. BOX 905, SANDPOINT, ID 83864

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Drivers License # [REDACTED] State ID Class 1

**PHYSICAL DESCRIPTION:**

Height 5'10" Weight 205 Sex M Hair BLN Eyes GRN Race WHI Other \_\_\_\_\_

Scars, Marks, Tattoo's \_\_\_\_\_

**CHARGES AND BAIL AMOUNT**

M/F	CODE	CHARGES	BOND AMOUNT	CITATION / CASE #
M	18-804	D.U.I.	\$500.00	35170

**ARRESTEE PROPERTY:**

INMATE'S MONEY \$ 71.10

5 VISA CARDS, 1 AMEX CARD, WALLET W/ MISC. PAPERWORK,  
2002 TAHOE KEY, KEYRING W/ 3 KEYS & REMOTE, BRN LEATHER BELT,  
BLACK FLEECE VEST, BRA SHOES, SOCKS

VEHICLE LOCATION: BILL JONES

PHONE CALL OFFERED BY ARRESTING OFFICER \_\_\_\_\_ ACCEPTED \_\_\_\_\_ DECLINED \_\_\_\_\_

**ARRESTING OFFICER INFORMATION:**

Time/Date of Arrest 0101 12/29/04 Location BOTTLE BAY RD. & HWY 95

Arresting Officer's # SP32 Arresting Officer's Signature [Signature]

Agency SANDPOINT P.D. Please print your name Timothy J. Fry



Dec 29 2004 1:14

BONNER COUNTY DISPATCH

208-265-5490

P. 1

Message received from: DMV )

KR.ID0090002.DMV .\*  
.NAM/JACOBSON, DAN S. RAC/U.SEX/M

MAY BE THE SAME AS: PAGE 01 FOR OFFICIAL INVESTIGATION PURPOSES ONLY  
OLN/QK315816A. PRIVACY FLAG.  
NAM/JACOBSON, DAN STANLEY. \*\* OPR STATUS/VALID.  
RES/4079 BOYLE BAY RD \*\* CDL STATUS/NOT LICENSED.  
PO BOX 905 CLASS/D. \*\* EXP/11-25-2007.  
SAGLE ID 83860. OLT/DRIVER LICENSE.  
MAIL/  
PO BOX 905  
SANDPOINT ID 83864.

SEX/M. HAI/BLN. EYE/GRN. DOB  
HGT/510. WGT/205. ISS/10-24-2003. REC/090032970062. CNTY/BONN.

AKA OLN/ AKA OLS/ID.  
CITN/06-09-1997C. 05-23-1997A.BASIC RULE. CTY.PRIEST RIVE.  
END OF RECORD  
END OF MESSAGE...

MRI 1437423 IN: DMVIO1 797 AT 01:52 29DEC04  
OUT: SBO3 27 AT 01:52 29DEC04

28 - 3603F ID

10-95 @ 01:01

Stop @ 00:45

Case # 04-018038



**NOTICE OF SUSPENSION** for Failure of Evidentiary Testing  
(Advisory for Sections 18-8002 and 18-8002A, Idaho Code)

DR # C4-018-35

Issued To: JACOBSON DAN STANCY  
Last Name First Middle Date of Birth  
4079 BOTTLE BAY RD; P.O. Box 905  
Mailing Address  
SAGLE IDA 83860  
City State Zip

BONNER  
County of Arrest Date of Arrest Time of Arrest  
Idaho Driver's License Number License Class Restrictions  
Out-of-State Driver's License Number State  
Citation #: 35170 Operating CMV? ☐ Yes ☒ No

**SUSPENSION ADVISORY**

- I have reasonable grounds to believe that you were driving or were in physical control of a motor vehicle while under the influence of alcohol, drugs, or other intoxicating substances.
- You are required by law to take one or more evidentiary tests to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in your body. After submitting to the test(s) you may, when practical, at your own expense, have additional tests made by a person of your own choosing.
- You do not have the right to talk to a lawyer before taking any evidentiary tests to determine the alcohol concentration or presence of drugs or other intoxicating substances in your body.
- If you refuse to take or complete any of the offered tests pursuant to Section 18-8002, Idaho Code:
  - Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Temporary permits cannot be issued to drivers operating commercial vehicles.
  - You have a right to submit a written request within seven (7) days to the Magistrate Court of BONNER County for a hearing to show cause why you refused to submit to or complete evidentiary testing and why your driver's license should not be suspended.
  - If you do not request a hearing or do not prevail at the hearing, your license will be suspended by the court with absolutely no driving privileges for 180 days if this is your first refusal; if this is not your first refusal in the last five years, your license will be suspended with absolutely no driving privileges for one (1) year. **THIS SUSPENSION FOR REFUSAL OF EVIDENTIARY TESTING IS SEPARATE FROM ANY OTHER SUSPENSION ORDERED BY THE COURT.**
- If you take and fail the evidentiary test(s) pursuant to Section 18-8002A, Idaho Code:
  - Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Temporary permits cannot be issued to drivers operating commercial vehicles. Non-resident licenses will not be seized and shall be valid in Idaho for thirty (30) days from the service of this notice of suspension, provided the license is valid in the issuing state.
  - I will serve you with this **NOTICE OF SUSPENSION** that becomes effective thirty days from the date of service on this **NOTICE**, suspending your driver's license or privileges. If this is your first failure of an evidentiary test your driver's license or driving privileges will be suspended for ninety (90) days, with absolutely no driving privileges during the first thirty (30) days. You may request restricted driving privileges for the remaining sixty (60) days of the suspension. If this is not your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind during that period. **THIS SUSPENSION FOR FAILURE OF THE EVIDENTIARY TEST(S) IS SEPARATE FROM ANY OTHER SUSPENSION ORDERED BY THE COURT.**
  - You have the right to an administrative hearing on the suspension before the **IDAHO TRANSPORTATION DEPARTMENT** to show cause why you failed the evidentiary test and why your driver's license should not be suspended. The request must be made in writing and be received by the department within seven (7) calendar days from the date of service of this **NOTICE OF SUSPENSION**. You also have the right to judicial review of the Hearing Officer's decision.

PLEASE REFER TO THE BACK OF THIS SUSPENSION NOTICE FOR MORE INFORMATION

**NOTICE OF SUSPENSION:** If you have failed the evidentiary test(s), your driving privileges are hereby suspended per #5 above, commencing thirty (30) days from the date of service of this notice. Date of Service: 12/29/01

**NOTE:** If a blood or urine test was administered, the department may serve a *Notice of Suspension* upon receipt of the test results.

- ☒ **DUI:** BAC is .08 or higher, §18-8002A ☐ **Refusal:** (original copy to court) §18-8002  
☐ **Operating CMV:** BAC is .04 to less than .08, §18-8002A ☐ **Operating CMV:** BAC is .08 or higher, §18-8002A  
☐ **Under 21:** BAC is .02 to less than .08, §18-8002A ☐ **Blood Test** (results pending) §18-8002A ☐ **Urine Analysis** (results pending) §18-8002A

**This Section Provides Temporary Driving Privileges.**

(If the driver was operating a commercial vehicle, this permit will not provide commercial driving privileges of any kind.)

If issued, this permit grants the same driving restrictions and privileges as those granted by the license/permit seized, and shall be valid for thirty (30) days from the date you were served this *Notice of Suspension* for failure or refusal of the evidentiary test(s), unless it is canceled or restricted by the court.

Permit Issued? ☒ Yes ☐ No License Surrendered? ☒ Yes ☐ No  
 A permit was not issued because the license was: ☐ Suspended ☐ Not in Possession ☐ Invalid  
☐ Expired ☐ Issued by another state

**REFUSED TO SIGN**

Signature of Temporary Licensee (if you are issued a permit, it is not valid until you sign it)

Print Name and I.D. Number of Reporting Officer (PRINT) Agency Code Telephone Number  
Timothy J. Fry SP32 0103 265 1082

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT  
CR 2004-9931  
2005 JAN -6 A 9 07

# **ORDER**

MARIE SCOTT  
CLERK DISTRICT COURT  
DEPUTY *JS*

Based upon the above Affidavit, the Court hereby finds that there is Probable Cause to believe that a crime(s) have been committed, and that the Defendant committed said crime(s).

Dated this 4 day of Jun, 2005 at \_\_\_\_\_ hours.

*Bob R*

MAGISTRATE

Charge	Idaho Code	Violation
1.		
2.		
3.		
4.		

1.  
2.  
3.  
4.



FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2005 FEB 24 A 11:23

NE SCOTT  
DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2004-0009931
	)	
vs.	)	MOTION TO DISMISS, MOTION TO
	)	SUPPRESS AND NOTICE OF MOTION
DAN S. JACOBSON,	)	
	)	
Defendant.	)	
	)	

COMES NOW Defendant, through his attorney, Fred R. Palmer, and moves the Court to dismiss or, if denied, to suppress BAC and field sobriety tests based upon denial meaningful telephone access while held in the Bonner County Jail on December 29, 2004.

Evidence and oral argument will be presented at time of hearing.

ARGUMENT

Defendant was arrested at 1:00 a.m. on December 29, 2004. Jail log shows he was admitted to the Bonner County Jail at 1:25 a.m. He completed his breath test at 1:50 a.m., was returned to holding cell, then taken to booking at 2:24 a.m. In the course of booking he was allowed a phone call which he used to attempt to arrange bail. He required a second phone call to complete arrangements for bail. His second phone call was denied for no

MOTION TO DISMISS, MOTION TO SUPPRESS AND NOTICE OF MOTION, Page 1

reason and at 3:01 a.m. he was placed back in his holding cell where he remained until 5:02 a.m. when he was taken out to booking, allowed to make a phone call at 5:25 a.m., and then returned to holding at 5:33 a.m. He was released after posting a cash bail bond at 7:06 a.m.

It is Jacobson's position that he was denied meaningful access to a telephone to arrange bail without cause for two to three hours and that this delay interfered with his ability to gather exculpatory evidence.

An "inherent exigency" exists in DUI cases, due to the destruction of evidence by metabolism of alcohol in the blood. Therefore, by refusing access to a telephone for approximately two hours after a request for an independent test and 3 ½ hours after arrest, the right to gather meaningful evidence is denied, entitling suppression of breath test results. *State v. Madden, 127 Idaho 894.*

Here, Jacobson did not request an independent test. In *State v. Carr, 128 Idaho 181*, there was no request for a second evidentiary test, but there was a request for telephone access to contact an attorney after BAC testing, while in a holding cell. Five hours passed from the time of arrest to the time of access. The Court held that the resulting interference with right to gather exculpatory evidence impaired due process right to a fair trial and also violated procedural due process.

In *State v. Cantrell, 03.24 ICAR 983*, the Court ruled that where there is a delay in release from jail, defendant must show that delay was caused by the state which hindered the gathering of exculpatory evidence.

In *State v. Shelton, 129 Idaho 877*, Shelton failed to assert his right to an

independent BAC test, but claimed procedural due process violations because law enforcement did not immediately inform him of his right of access to a telephone and to be transported for independent testing. In ruling against Shelton, the court stated that access to a telephone after BAC testing is important in that it is a mechanism through which a DUI detainee executes his right to a second test or to otherwise pursue evidence regarding his or her state of intoxication. Once a request has been made to use a telephone the state may not interfere with or deny the detainee access to a telephone to arrange for independent testing. Jacobson, unlike Shelton, requested telephone access.

Here, four hours passed from Jacobson's arrest to a second telephone call and six hours from arrest to release. The delay was intentional. As stated in *Carr* and repeated in *Cantrell*, even if there is no expressed intent to obtain another BAC test, other exculpatory evidence such as photographing of non-bloodshot eyes, taping of clear speech, video taping to show balance, independent performance of gaze nystagmus, etc. can be obtained upon release. As in *Carr*, due process has been violated and the DUI should be dismissed.

TO: Lori Meulenberg, Prosecutor, City of Sandpoint

YOU ARE HEREBY NOTIFIED that the above motion has been set for hearing on the 13<sup>th</sup> day of April, 2005, at the hour of 4:00 o'clock p.m., or as soon thereafter as counsel may be heard, before the Honorable Debra Heise, in the courtroom of the above entitled court, Bonner County Courthouse, Sandpoint, Idaho.

DATED this 22 day of February, 2005.



Fred R. Palmer, Attorney for Defendant

MOTION TO DISMISS, MOTION TO SUPPRESS AND NOTICE OF MOTION, Page 3

I hereby certify that a true and correct copy of the foregoing was \_\_\_ mailed,  
postage prepaid, ☒ hand delivered, \_\_\_ faxed, this 22 day of February, 2005, to:

Lori Meulenberg, Prosecutor  
City of Sandpoint  
Courthouse Mail  
Bonner County Courthouse

Debra R. Lake

MOTION TO DISMISS, MOTION TO SUPPRESS AND NOTICE OF MOTION, Page 4

**FRED R. PALMER**  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
FAX (208) 263-8002



**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

**COURT MINUTES**

**JUDGE: DEBRA HEISE**  
**REPORTER:**  
**CLERK: LYNNE ANDERSON**

**CASE NO. CR 2004-0009931**  
**DATE: 04/13/2005** **TIME: 4:00 PM**  
**TAPE: 05-339/340**

**STATE OF IDAHO**

**vs DAN STANLEY JACOBSON**

Plaintiff / Petitioner

Defendant / Respondent

Atty: LORI MEULENBERG

Atty: FRED PALMER

**SUBJECT OF PROCEEDINGS  
CHARGE**

**MOTION TO DISMISS**

INDEX	SPEAKER	PHASE OF CASE
971		<b>Calls Case</b>
		<b>Present:</b> DEF W/ FRED PALMER; LORI MEULENBERG FOR STATE
	FP	IF MOTION TO DISMISS DENIED, WILL GO ON TO MOTION TO SUPPRESS.
	J	MAY NOT BE ABLE TO FINISH TODAY, IN THAT CASE.
	FP	HAVE STIPULATIONS. 12/29/04 JAIL LOG MARK DEF'S A
	J	ADMIT?
	LM	NO OBJECTION
	J	A ADMITTED
	FP	STIPULATED THAT DEF ARRESTED AT LAST BLOW ON INTOX WAS @ OFFER DEF'S B: A SECURITY VIDEO SHOWING BOOKING AREA TAKEN 12/29/04.
	LM	STIPULATE IS VIDEO ON THAT DATE & TIME MAY HAVE QUESTIONS OF TECH LATER.
1198	FP	STARTING OF VIDEO FIRST SEVERAL HOURS ON FAST FORWARD PRIOR
1275		VIDEO PLAYING
1462	FP	CALL DEF
	CLERK	DEF SWORN
	FP	DIRECT
	DEF	VIEWED VIDEO. RECOGNIZE MYSELF IN VIDEO. WAS TAKEN IN BOOKING AREA ON 12/29/04. SEE ME WALKING UP TO PHONE. FIRST TIME I PLACED CALL FROM JAIL. CALLED BAIL BONDSMAN. BAIL WAS \$500.00. I TOLD THEM I HAD SOME CASH & CREDIT CARDS. TOLD ME I WOULD REQUIRE A CO- SIGNER. THEY TOLD ME IT WAS THEIR POLICY. I TOLD THEM THAT WAS RIDICULOUS AND HUNG UP. DEPUTY DIDN'T LIKE WAY I WAS TALKING TO BAIL BONDSMAN AND TOLD ME I HAD BAD ATTITUDE. DIDN'T PHYSICALLY RESIST ANYONE IN JAIL. IN VIDEO, 2 <sup>ND</sup> OCCASION APPROACH PHONE ON WALL. MADE SECOND CALL. WAS IN HOLDING CELL BETWEEN TIMES OF MAKING CALLS. 2 <sup>ND</sup> CALL TO MY WIFE. I TOLD HER I COULDN'T GET BAIL. SHE CAME WITH \$500.00 CASH AND I WAS RELEASED. I CALLED YOU LATER IN THE MORNING. I FIGURED IT WAS 6:30 AM, WHAT GOOD WOULD TEST DO THEN, SO DIDN'T GET FURTHER TESTING.
1865	LM	CROSS
	DEF	I DIDN'T TELL OFFICER I WANTED INDEPENDENT BREATH TEST. DIDN'T KNOW I COULD ASK THEM. I FIGURED I COULD GET A HOLD OF FRED OR BOND OUT AND GET TEST ELSEWHERE. I ASKED TO MAKE 2 <sup>ND</sup> PHONE CALL BUT DIDN'T TELL THEM WHAT FOR.

	J	QUESTION
	DEF	I TOLD DEPUTY I WANTED TO MAKE 2 <sup>ND</sup> CALL AFTER FIRST CALL. I WAS TOLD WHEN MY ATTITUDE WAS BETTER.
2043	FP	NO ADDITIONAL EVIDENCE
	LM	CALL DEPUTY DARLENE INMAN
	CLERK	DARLENE INMAN SWORN
	LM	DIRECT
	DI	BCSO. ON DUTY 12/29/04.
		05-339 2079 END 05-340 BEGIN
0001	LM	DIRECT
	DI	WE KEEP LOG OF WHAT IS HAPPENING IN BOOKING AREA. POSSIBLY SOME TIME MISSING IN VIDEO. VIDEO LOOKS LIKE HE WAS ON PHONE 3 TIMES.
95		VIDEO PLAYING, AGAIN
161		OFFICER FRYE LEFT AT 2:24 AM. HAD OTHERS TO BOOK PRIOR TO DEF. WE STARTED BOOKING, HE GOT AN ATTITUDE, SO WE BOOKED HIM LATER. RECORDED ON LOG ABOUT HIS ATTITUDE. SHOWS ON LOG HE WENT BACK TO HOLDING @ 3:01. USUALLY 2 PEOPLE TAKE A PERSON BACK TO HOLDING IF PERSON HAS ATTITUDE.
317	J	APOLOGIZE BUT WE WILL HAVE TO CONTINUE THIS. <b>CONTINUE THIS ON WEDNESDAY, 4/27/05 @ 3:00 PM.</b> THIS IS ONLY NOTICE.
404		END

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

COURT MINUTES

JUDGE: DEBRA HEISE  
REPORTER:  
CLERK: SANDRA RASOR

CASE NO. CR-04-9931  
DATE: 04-27-05 TIME: 3:00 PM  
TAPE: 05-414

STATE OF IDAHO

vs DAN STANLEY JACOBSON

Plaintiff / Petitioner

Defendant / Respondent

Atty: LORI MEULENBERG

Atty: FRED PALMER

SUBJECT OF PROCEEDINGS  
CHARGE

MOTION TO DISMISS

INDEX	SPEAKER	PHASE OF CASE
001	J	<b>Calls Case</b>
		<b>Present:</b> DEFENDANT, FRED PALMER, LORI MEULENBERG
	J	CONTINUING MOTION TO DISMISS, LAST HEARD FROM DEPUTY DARLENE INMAN, MS MEULENBERG WAS QUESTIONING
	LM	REDIRECT
80	DI	3 CALLS MADE BASED ON WHAT I SAW ON VIDEO, NO RECOLLECTION OF PHONE USE THAT DAY. 6 PEOPLE WERE BOOKED AFTER MIDNIGHT, BOOKING PROCESS TAKES ABOUT AN HOUR PER INMATE, PROCESS ON FIRST COME FIRST SERVE BASIS, CHECK LOG TO GO IN ORDER, DEF WAS THE LAST TO BE PROCESSED ON SHIFT, OTHER DUTIES INVOLVE PAPERWORK, PERSON THAT STARTS BOOKING USUALLY COMPLETES IT, DEF BOOKING PROCESS BEGAN AT 3:49 AM, HIS FIRST CALL WAS BEFORE 3, THEN TWO AFTER THAT, IT PRINTS OUT ON COMPUTER SCREEN. DON'T MONITOR PHONES ALLOW AS MANY CALLS AS NECESSARY, BOND COMPANIES POSTED BY PHONE WITH NAMES AND NUMBERS, ONLY ALLOWED TO MAKE PHONE CALLS NOT WALK UP AND DOWN HALLWAY SECURITY REASONS, DO NOT REMEMBER HIM IN PARTICULAR, BOOKED SO MANY PEOPLE OVER TIME. DO NOT RECALL HIM ASKING TO MAKE CALLS. HE MADE A CALL BEFORE PROCESSED AND ONE WHEN HE HAD BEEN PROCESSED. LOG INDICATES DEF HAD AN ATTITUDE USUALLY MEANS ARGUMENTATIVE. STILL GO IN ORDER TAKEN IN. ONLY ONE PHONE, IT IS LIKELY OTHERS THERE THAT WOULD HAVE NEEDED TO USE PHONE.
500	FP	CROSS, EXAMINES LOG SHEET THAT DEPUTY INMAN IS USING
560	DI	CANNOT TELL FROM LOG SHEET WHO WAS ARRESTED FOR DUI, DESCRIBES DUI PROCEDURE, LOG SHEET SHOWS WHEN INDIVIDUALS ARRESTED,
	J	JUDGE HANDS STATES EXHIBIT A TO DEPUTY INMAN
	DI	4 INMATES RETURNED FROM KOOTENAI COUNTY AND ONE FROM BOUNDARY COUNTY, ONE FROM BOUNDARY WAS NOT BOOKED IN, DO NOT KNOW WHAT THE FOUR WERE BOOKED FOR, DON'T KNOW IF THEY WOULD HAVE NEEDED A BONDSMAN. TAKEN BACK TO HOLDING AFTER GETTING ATTITUDE WITH STAFF, WOULD HAVE BEEN TAKEN TO HOLDING ANYWAY
	LM	OBJECTION
	J	CALLS FOR SPEC
852	DI	DO NOT RECALL IF HE WAS FINISHED WITH PHONE WHEN TAKEN BACK TO CELL. NO ACCESS TO PHONE BETWEEN 3 AND 5

903	LM	REDIRECT
	DI	IF DEF HAD NOT HAD AN ATTITUDE HE WOULD HAVE BEEN ALLOWED TO MAKE PHONE CALLS
925	FP	OBJECTION SPECULATION
	FP	IF QUESTION REGARDS JAIL POLICY I WITHDRAW QUESTIONS
	J	OVERRIDE
	DI	IF DEFENDANT HAD ASKED FOR 2 <sup>ND</sup> BREATH TEST WE DO NOT DO THAT , THE ARRESTING OFFICER DOES THE TEST,
	FP	NO RECROSS
	LM	NO FURTHER WITNESSES
	J	MR PALMER?
1042	FP	ARGUMENT
1150	FP	MOVE TO REOPEN AND ASK DEFENDANT AGAIN
	J	DENY GO WITH WHAT WE HAVE ON RECORD DEFENDANTS TESTIMONY CONFLICTS
	FP	THE CONTEXT OF QUESTIONING DID NOT HAVE TO DO WITH CALL BUT ON DEFENDANTS ATTITUDE. OUR POSITION IS THAT THE TESTIMONY THAT HE DID ASK TO MAKE ANOTHER PHONE CALL AND WAS DENIED, BEING DENIED A PHONE CALL IS IMPORTANT I SET FORTH IN ARGUMENT ATTACHED TO MY BRIEF. REFERS TO CARR CASE, A MEANINGFUL PHONE CALL TO OBTAIN EXCULPATORY EVIDENCE, AT LEAST WITH REGARD TO PHONE CALLS THERE HAS TO BE AN EFFORT TO ALLOW PEOPLE TO GET EVIDENCE
	J	I DON'T WANT TO WAIT IN LINE FOR ALL DUI'S TO GET PROCESSED FIRST
	FP	ARGUES FURTHER,
1650	LM	ARGUES, DEF DID HAVE ACCESS TO PHONE, IT WAS TIMELY, TOOK BREATH TEST, COULD NOT CONTINUE CALLING BASED ON HIS OWN ACTIONS. BURDENSOME TO JAIL TO HAVE TO BE THERE AT ALL TIMES TO ALLOW CONSTANT PHONE CALLS. THERE WAS NO DUE PROCESS VIOLATION,
1737	FP	WITH CARR THE SAME ARGUMENT WAS MADE, FINALLY WAS ALLOWED TO CALL WIFE TO COME DOWN AND BAIL HIM OUT. IF NO DISMISSAL AT LEAST ALLOW SUPPRESSION OF BREATH TEST, AT LEAST A 2 HOUR DELAY.
1922	J	I THINK AT ALL TIMES PEOPLE SHOULD BE TREATED WITH RESPECT, BUT AT THE SAME TIME NOT RUNNING A HOTEL, CUSTOMER SATISFACTION IS NOT WHAT THEY ARE GOING FOR. YES ALL NEED ACCESS, I FIND THAT DEFENDANTS LAST BLOW WAS AT 1:58, HE WAS GIVEN TWO OPPORTUNITIES TO MAKE A PHONE CALL., DURING THAT CALL HE BECAME UPSET, BY HIS OWN ADMISSION, HE WAS MANIFESTING AGITATION, HE NEVER VERBALIZED HIS INTENT WAS TO CALL HIS WIFE, WHEN HE WAS RELEASED HE NEVER MADE ANY ATTEMPT TO GET FURTHER TESTING NOR DID HE CONTACT AN ATTY BUT CALLED HIS WIFE AND ASKED HER TO GET CASH AND HE POSTED BAIL. I FIND FACTS ARE DISSIMILAR FROM STATE VERSUS CARR BECAUSE HE WAS ALLOWED TO USE THE PHONE AND HE NEVER VERBALIZED THAT HE WANTED TO TAKE A TEST OR CALL A LAWYER, OBVIOUS TO ME THAT OFFICERS WERE DILIGENT IN DOING PAPERWORK AND GIVING ACCESS TO PHONE, I FIND <b>NO BREACH OF DUE PROCESS AND MOTION TO SUPPRESS IS NOT APPROPRIATE EITHER, DENY REQUEST, MS MEULENBERG PLEASE PREPARE ORDER.</b>
2220		END

OFFICE OF THE CITY ATTORNEY  
1123 Lake Street  
SANDPOINT, IDAHO 83864  
(208) 263-0534

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

2005 MAY -4 A 10:27

MARIE SCOTT  
CLERK DISTRICT COURT

DEPUTY *Ja*

STATE OF IDAHO,  
Ex Rel City of Sandpoint,

Plaintiff,

vs.

Dan Jacobson,

Defendant.

Case No. 2004-0009931  
Citation No.

**ORDER**

THE ABOVE entitled matter came before the Court on the  
13<sup>th</sup> and 27<sup>th</sup> days of April 2005 on Defendant's Motion to  
Dismiss, Motion to Suppress. After evidence and testimony  
being presented by the Defense and the State, the Court  
finds the following:

- 1) Mr. Jacobson took his last breath test at 1:50am.
- 2) Mr. Jacobson was given two opportunities to make a  
phone call before 3:00am.
- 3) Mr. Jacobson talked to a bondsman on the phone and  
during the call he became upset and was manifesting  
agitation.
- 4) Mr. Jacobson never verbalized his intent to call his  
wife
- 5) Mr. Jacobson upon his release never made any attempt  
to get further testing nor did he contact an attorney.

6) At 5:26am he was allowed to make another telephone call. He called his wife and posted bail.

7) The facts of this case are dissimilar from State v. Carr, 128 Idaho 181, 911 P.2d 774 (1995) in that Mr. Jacobson was allowed to use the phone and he never communicated to the officers or jailers that he wanted another test or that he wanted to call his attorney.

8). Officers (jailers) were diligent in doing their paperwork and giving Mr. Jacobson access to the phone.

THEREFORE, the Court finds no breach of due process and DENIES DEFENDANT's Motion to Dismiss, Motion to Suppress.

DATED this 4 day of May, 2005.

Delia D. Herne

Magistrate

#### CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was hand delivered/mailed, postage prepaid, this 4 day of May, 2005 and was addressed to:

Lori Meulenberg  
Attorney at Law  
Courthouse Mail  
Sandpoint, Idaho 83864

Fred Palmer  
Attorney at Law  
106 Superior St.  
Sandpoint, Idaho 83864

Ja  
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

**COURT MINUTES**

**JUDGE:** DEBRA HEISE  
**REPORTER:**  
**CLERK:** LYNNE ANDERSON

**CASE NO.** CR 2004-0009931  
**DATE:** 05/05/05 **TIME:** 9:00 AM  
**TAPE:** 05-460

**STATE OF IDAHO**

**vs DAN STANLEY JACOBSON**

Plaintiff / Petitioner

Defendant / Respondent

Atty: LORI MEULENBERG

Atty: FRED PALMER

**SUBJECT OF PROCEEDINGS  
CHARGE**

**JURY TRIAL**

INDEX	SPEAKER	PHASE OF CASE
81	J	<b>Calls Case</b>
		<b>Present:</b> DEF W/ FRED PALMER; LORI MEULENBERG FOR STATE
	FP	ONE OF TERMS IS AFTER
	J	DUI, PENALTIES. I AM SIGNING PLEA BARGAIN AGREEMENT. UNDERSTAND RIGHTS & PENALTIES?
	DEF	YES
	J	PLEA?
	DEF	GUILTY
	J	UNDERSTAND RIGHTS GIVEN UP WITH GUILTY PLEA?
	DEF	YES
	J	PROMISES/THREATS?
	DEF	NO
194	J	ACCEPT PLEA. <b>SET SENTENCING 07/18/05 @ 9:00 AM</b>
224	FP	WANT AFFIRM GUILTY PLEA IS CONDITIONAL PLEA
	J	UNDER AGREEMENT, DEF HAS RIGHT TO APPEAL SUPPRESSION HEARING
	LM	THAT IS CORRECT
245	J	NEED TO BRING ALCOHOL EVALUATION TO SENTENCING
275		END

STATE OF IDAHO  
County of Bonner  
FILED 5/5/05 ss  
AT 9:00 O'clock A M  
CLERK. DISTRICT COURT  
Deputy JA

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2004-0009931
	)	
vs.	)	PLEA BARGAIN AGREEMENT
	)	
DAN S. JACOBSON,	)	
	)	
Defendant.	)	

COMES NOW the parties, through their attorneys, and respectfully stipulate to the following terms of a plea bargain agreement in the above cause:

1. Defendant will enter a conditional plea of Guilty (Rule 11[a][2], ICR) to DUI, a violation of Idaho Code §18-8004, and obtain an alcohol evaluation prior to sentencing;
2. Sentence will be imposed by the Court at a date no sooner than July 1, 2005;
3. After pronouncing sentence, execution of said sentence will be stayed (Rule 55.4[a]) by the Court if Defendant so requests at time of sentencing and if Defendant files a Notice of Appeal within the statutory period;
4. Upon filing an appeal and submission of motion by Defendant, the Court will stay judgment (Rule 54.5[b][3]) pending appeal;
5. At time of sentencing, the State will not oppose entry of a withheld judgment;
6. The Court will bind itself to provisions set forth under Paragraphs 2, 3 and 4 pursuant to Rule 11, ICR.

PLEA BARGAIN AGREEMENT, Page 1

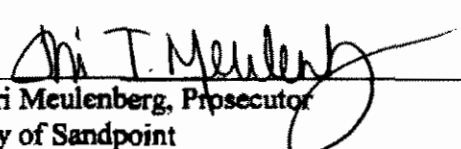
FRED R. PALMER  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

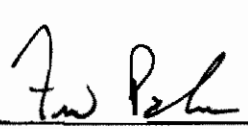
(208) 263-8529  
Fax (208) 263-8963



The parties submit that the factual basis for a stay of ~~entry~~ of Defendant's judgment of guilty on his formal record pending appeal is the impact any such entry would have upon Defendant's entry into Canada, where Defendant regularly conducts business and visits his sister's family, and the impact on his marine captain's license, issued by the U. S. Coast Guard.

DATED this 5<sup>th</sup> day of May, 2005.

  
Lori Meulenberg, Prosecutor  
City of Sandpoint

  
Fred R. Palmer, Attorney for  
Defendant

So Approved:

  
Debra A. Heise, Magistrate

5/5/2005  
Date

PLEA BARGAIN AGREEMENT, Page 2

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

COURT MINUTES

JUDGE: HEISE  
REPORTER:  
CLERK: PEINE

CASE NO. CR04-9931  
DATE: 7-18-05 TIME: 9:00 AM  
TAPE: 05-703

STATE OF IDAHO/ CITY OF SANDPOINT

Vs DAN STANLEY JACOBSON

Plaintiff / Petitioner

Defendant / Respondent

Atty: MS. BENNETT

Atty: FRED PALMER

SUBJECT OF PROCEEDINGS  
CHARGE

SENTENCING

LEGEND: J Court (Judge)  
P Plaintiff  
D Defendant  
CLK Clerk

PET Petitioner  
RESP Respondent  
JUV Juvenile  
JPO Juv Prob Officer

DIR Direct Examination  
REDIR Redirect Examination  
X Cross Examination  
RE-X Examination

INDEX	SPEAKER	PHASE OF CASE
631	J	<b>Calls Case</b>
		<b>Present:</b> DEF W/ FRED PALMER, J. BENNETT FOR CITY
	J	THERE IS AN EVALUATION IN THE FILE. WILL RECESS WHILE MR. PALMER REVIEWS THAT INFORMATION.
665	J	RECESS
666	J	RECONVENED
	FP	EXPLAINED THAT THERE IS AN ERROR IN THE RECORDS CHECK. HAS COMMUNICATED WITH THE STATE OF WASHINGTON THROUGH AN ATTORNEY IN PULLMAN. PRESENTED INFORMATION FROM WASHINGTON STATE PATROL. HE IS SEEKING A WITHHELD JUDGMENT SO ARGUED FOR THAT. PRESENTED DOCUMENTS FROM COLFAX, WA COURT.
855	JB	NO OBJECTION TO A WITHHELD JUDGMENT.
868	J	AGREE RECORD'S CHECK NEEDS TO BE CORRECTED.
	JB	STATE RECOMMENDS STANDARD RECOMMENDATIONS FOR 1 <sup>ST</sup> OFFENSE
880	FP	REFERRED TO RULE 11 PLEA AGREEMENT. HE WILL BE APPEALING THE PRIOR RULING ON DEF'S MOTION TO SUPPRESS.
905	DEF	COMMENTS ON OWN BEHALF.
934	J	IMPOSE WITHHELD JUDGMENT. 2 DAYS ON SLP - SIGN UP W/IN 7 DAYS AFTER JUDGMENT ON APPEAL AND COMPLETE W/IN 30 DAYS AFTER FINAL JUDGMENT ON APPEAL. SEE JDMT FOR FINE/COSTS. <b>CASH BOND TO REMAIN IN FILE PENDING APPEAL.</b>
	FP	THERE WAS AN ALS SUSPENSION ENTERED 1/28-4/28/05.
	J	DISCUSSION ON D/L SUSPENSION AND WHETHER STAYED OR NOT WHILE ON APPEAL.
995	J	2 YEARS PROBATION W/STANDARD CONDITIONS. SEE JDMT.
1040		END

☒ ADULT

☐ JUVENILE

STATE OF IDAHO  
County of Bonner  
FILED 7-18-05  
AT 9:00 O'Clock a M  
CLERK, DISTRICT COURT  
Deputy cap

# JAIL INFORMATION FOR BONNER COUNTY SHERIFF'S OFFICE

JUDGE: HEISE

CASE NO. CRO4 -- 9931

DAN  
(SUBJECT'S FIRST NAME)

STANLEY  
(SUBJECT'S MIDDLE NAME)

JACOBSON  
(SUBJECT'S LAST NAME)

☒ SUBJECT APPEARED IN COURT ON: MON July 18, '05 AT 0935 AM

☒ SUBJECT IS TO: ☐ BE OR'D ☐ REMAIN IN CUSTODY  
☐ BE RELEASED BY JUDGES ORDER ☐ BOND \$  
☐ BE RELEASED/TIME SERVED  
☐ BE RELEASED TO PARENT/PTA  
☐ MUST SIGN WAIVER OF EXTRADITION ☐ WORK RELEASE/SEARCH GRANTED  
☐ AUTHORIZATION TO TRANSFER TO REGION ONE JUVENILE DETENTION CENTER GRANTED, IF NECESSARY.

☒ SENTENCED TO: ☐ WHS DAYS IMPOSED 16 HOURS ON SHERIFF'S LABOR PROGRAM.  
☐ DAYS SUSPENDED SIGN UP WITHIN SEVEN (7) DAYS FROM TODAY  
☐ DAYS TO SERVE AT SHERIFF'S OFFICE AND COMPLETE BY:  
☐ DAYS CREDIT WITHIN 30 DAYS, 20 05  
OFFICIAL JUDGEMENT  
☐ SUBJECT TO REPORT TO THE BONNER COUNTY JAIL ON: ON APPEAL AT                      M  
☐ BREATH OR U/A TEST ORDERED                      X'S WEEKLY ON:                      AT                      M  
☐ SUBJECT PLACED IN THE CUSTODY OF THE DEPT. OF HEALTH & WELFARE NOT TO EXCEED                      YEAR(S).

☐ SUBJECT SENTENCED TO SERVE NOT LESS THAN                      AND NOT MORE THAN                       
IN THE IDAHO STATE DEPT. OF CORRECTIONS.  
☐ THIS SENTENCE IS SUSPENDED. ☐ PLACED ON                      YEARS PROBATION.  
☐ SUBJECT TO BE PLACED IN THE RETAINED JURISDICTION PROGRAM FOR NOT MORE THAN 180 DAYS.  
☐ AS CONDITION OF PROBATION, SUBJECT TO SERVE                      DAYS LOCAL JAIL.

CHARGES SENTENCING

JUDGE'S ORDER: SUBJECT IS TO SERVE 16 hrs on Sheriff's  
WORK PROGRAM. Sign up within  
7 DAYS

Withheld Judgement. GRANTED

☐ JUDGE'S ORDER WILL FOLLOW ☐ PUBLIC DEFENDER OFFICE APPOINTED

JUDGE'S SIGNATURE (if needed)                      BAILIFF PG

STATE OF IDAHO VS  
DAN STANLEY JACOBSON  
4079 BOTTLE BAY RD  
SACILE, ID 83860  
SSN # [REDACTED]  
DL# [REDACTED]  
DOB: [REDACTED]  
AGENCY: SANDPOINT CITY POLICE DEPARTMENT  
CASE # CR-2004-0009931 CITATION # 0035170  
CHARGE: 118-8004 M. Driving Under The Influence  
AMENDED:  
The Defendant, having been fully advised of his/her statutory and constitutional rights, including the right to be represented by counsel, ( ) SEE ATTACHED, and  
( ) Defendant waived right to counsel  
( ) Defendant represented by counsel  
( ) Judgment, Plea of Guilty/Rights Waived  
( ) Withheld Judgment ( ) Accepted  
MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.  
Fine/Denialty \$ 500  
Costs \$ 88.50  
Suspended \$ [REDACTED]  
Time to be paid by [REDACTED] or appear at [REDACTED] m. to show cause why not paid.  
Monthly payments of \$ [REDACTED]  
Community Service of [REDACTED] hrs., to be completed by [REDACTED]  
Reimburse and/or Restitution: [REDACTED]  
Bond Exonerated and Applied to Fine and Costs ( ) Return Remainder ( ) BOND EXONERATED  
No Contact Order Vacated  
\$10 Misdemeanor Probation Fee  
INCARCERATION ORDERED: [REDACTED]  
Jail [REDACTED]  
Report to jail [REDACTED]  
Release [REDACTED]  
Work Release Authorized ( ) In-Home Monitoring [REDACTED]  
Sheriff's Inmate Labor Program, in lieu of jail [REDACTED]  
DRIVING PRIVILEGES SUSPENDED [REDACTED]  
REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED prior to test drive. Apply to [REDACTED]  
Probation Ordered For [REDACTED]  
Violate no federal, state or local law, excluding traffic infractions.  
During the period of probation you may, and by accepting the conditions of the suspended sentence, you are consenting to be stopped by any peace officer if you are observed operating a motor vehicle on a public highway. The officer may, with or without probable cause, make a stop and require you to submit to a test to determine if there is any alcohol in your bloodstream. If you are driving with any alcohol in your bloodstream, it is a violation of your probation. If you refuse to take the test, as requested, that also is a violation of your probation.  
( ) Enroll in a substance abuse program within [REDACTED] days, complete [REDACTED]  
( ) Attend the Alcohol and Traffic Safety Victims Panel Session by [REDACTED]  
( ) Notify the Court, in writing, of any change of address within 10 days of the change.  
( ) Maintain liability insurance on any vehicle that you drive.  
( ) Interlock ignition device required on vehicle for [REDACTED] month(s)/year(s) to be installed by [REDACTED]  
( ) Pay above monies ordered as directed.  
( ) OTHER [REDACTED]

The Defendant, having been fully advised of his/her statutory and constitutional rights, including the right to be represented by counsel, ( ) SEE ATTACHED, and

( ) Defendant waived right to counsel

( ) Defendant represented by counsel

( ) Judgment, Plea of Guilty/Rights Waived

( ) Withheld Judgment ( ) Accepted

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

Fine/Denialty \$ 500

Costs \$ 88.50

Suspended \$ [REDACTED]

Time to be paid by [REDACTED] or appear at [REDACTED] m. to show cause why not paid.

Monthly payments of \$ [REDACTED]

Community Service of [REDACTED] hrs., to be completed by [REDACTED]

Reimburse and/or Restitution: [REDACTED]

Bond Exonerated and Applied to Fine and Costs ( ) Return Remainder ( ) BOND EXONERATED

No Contact Order Vacated

\$10 Misdemeanor Probation Fee

INCARCERATION ORDERED: [REDACTED]

Jail [REDACTED]

Report to jail [REDACTED]

Release [REDACTED]

Work Release Authorized ( ) In-Home Monitoring [REDACTED]

Sheriff's Inmate Labor Program, in lieu of jail [REDACTED]

DRIVING PRIVILEGES SUSPENDED [REDACTED]

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED prior to test drive. Apply to [REDACTED]

Probation Ordered For [REDACTED]

Violate no federal, state or local law, excluding traffic infractions.

During the period of probation you may, and by accepting the conditions of the suspended sentence, you are consenting to be stopped by any peace officer if you are observed operating a motor vehicle on a public highway. The officer may, with or without probable cause, make a stop and require you to submit to a test to determine if there is any alcohol in your bloodstream. If you are driving with any alcohol in your bloodstream, it is a violation of your probation. If you refuse to take the test, as requested, that also is a violation of your probation.

( ) Enroll in a substance abuse program within [REDACTED] days, complete [REDACTED]

( ) Attend the Alcohol and Traffic Safety Victims Panel Session by [REDACTED]

( ) Notify the Court, in writing, of any change of address within 10 days of the change.

( ) Maintain liability insurance on any vehicle that you drive.

( ) Interlock ignition device required on vehicle for [REDACTED] month(s)/year(s) to be installed by [REDACTED]

( ) Pay above monies ordered as directed.

( ) OTHER [REDACTED]

THE DEFENDANT HAS THE RIGHT TO APPEAL  
THIS JUDGMENT WITHIN 42 DAYS.

SUSPENDED PENALTIES ARE SUBJECT TO COMPLIANCE WITH ALL OF THE ABOVE TERMS

Days/Months Suspended [REDACTED] Days/Months ( ) Credit for time served

Work Release Authorized ( ) In-Home Monitoring [REDACTED]  
Sheriff's Inmate Labor Program, in lieu of jail [REDACTED]  
DRIVING PRIVILEGES SUSPENDED [REDACTED]  
REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED prior to test drive. Apply to [REDACTED]  
Probation Ordered For [REDACTED]  
Violate no federal, state or local law, excluding traffic infractions.  
During the period of probation you may, and by accepting the conditions of the suspended sentence, you are consenting to be stopped by any peace officer if you are observed operating a motor vehicle on a public highway. The officer may, with or without probable cause, make a stop and require you to submit to a test to determine if there is any alcohol in your bloodstream. If you are driving with any alcohol in your bloodstream, it is a violation of your probation. If you refuse to take the test, as requested, that also is a violation of your probation.

( ) Enroll in a substance abuse program within [REDACTED] days, complete [REDACTED]  
( ) Attend the Alcohol and Traffic Safety Victims Panel Session by [REDACTED]  
( ) Notify the Court, in writing, of any change of address within 10 days of the change.  
( ) Maintain liability insurance on any vehicle that you drive.  
( ) Interlock ignition device required on vehicle for [REDACTED] month(s)/year(s) to be installed by [REDACTED]  
( ) Pay above monies ordered as directed.  
( ) OTHER [REDACTED]

SUSPENDED PENALTIES ARE SUBJECT TO COMPLIANCE WITH ALL OF THE ABOVE TERMS

THE DEFENDANT HAS THE RIGHT TO APPEAL  
THIS JUDGMENT WITHIN 42 DAYS.

COPIES TO:  
( ) Defendant ( ) Def Atty ( ) Prosecutor ( ) Jail ( ) Dr. Serv. ( ) Sup. Ct.  
( ) Auditor ( ) Com. Serv. ( ) OTHER [REDACTED]  
Date 7/18/2005 Judge # 218  
Dep. Clerk [REDACTED]

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2005 JUL 19 A 9:02

MARIE SCOTT  
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

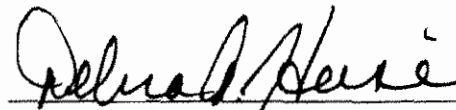
STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2004-0009931
	)	
vs.	)	STAY ORDER
	)	
DAN S. JACOBSON,	)	
	)	
Defendant.	)	

The Honorable Debra A. Heise, Magistrate, hereby enters the following stay orders  
pending appeal to the District Court of the First Judicial District in the above matter.

1. Execution of Judgment and Sentence entered July 18, 2005 is stayed pursuant to Rule 55.4(a), ICR;
2. Stay of Judgment entered in the above cause on July 18, 2005 pursuant to Rule 54.5(B)(3), ICR.

The above identified stay orders are to remain in effect until otherwise ordered by  
the Court.

DATED this 19 day of July, 2005.

  
Debra A. Heise, Magistrate

STAY ORDER, Page 1

FRED R. PALMER  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983

I hereby certify that a true and correct copy of the foregoing was \_\_\_\_\_ hand delivered, \_\_\_\_\_ faxed, X mailed, postage prepaid, this 19 day of July, 2005 to:

Lori Meulenberg, Prosecutor  
City of Sandpoint  
Courthouse Mail  
Bonner County Courthouse

BCSO Jail

Fred R. Palmer  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864

D.O.T.

cap

STAY ORDER, Page 2

**FRED R. PALMER**  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2005 JUL 18 P 3:18

THE CLERK  
DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	Case No. CR-2004-0009931
	)	
vs.	)	NOTICE OF APPEAL
	)	
DAN S. JACOBSON,	)	
	)	
Defendant-Appellant.	)	
	)	

TO: Lori Meulenberg, Prosecutor, City of Sandpoint, and to the Clerk of the above-entitled Court:

1. Title of the action or proceedings:

State v. Dan S. Jacobson

2. Title of the court from which appeal is taken:

Magistrate Division, First Judicial District of the State of Idaho, in and for  
County of Bonner

3. The number assigned to the action or proceedings by the trial court:

CR-2004-0009931

4. Title of the court to which the appeal is taken:

District Court of the First Judicial District of the State of Idaho, in and for  
the County of Bonner

5. Date and heading of the judgment or decision from which the appeal is  
taken:

NOTICE OF APPEAL, Page 1

FRED R. PALMER  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983

May 4, 2005 order of the Honorable Debra A. Heise denying Defendant's pretrial motions to dismiss and to suppress.

6. Statement as to whether the appeal is taken upon matters of law, or upon matters of fact, or both:

Both.

7. Statement as to whether the testimony and proceedings of the original trial or hearing were recorded or reported, together with an identification of the method of recording or reporting and the name of the party or person in whose possession such recording or reporting is located.

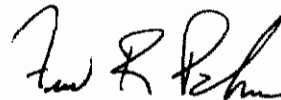
Tape recording in the possession of the Bonner County Clerk.

8. State the issues on appeal which the appellant then intends to assert in the appeal; provided, such statement may be filed separately within fourteen (14) days after the filing of the notice of appeal and any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal thereafter discovered by the appellant.

Issues are as follows:

- a. If Defendant was denied due process of law.
  - b. If Defendant was denied his statutory right to an independent evidentiary test as set forth in Idaho Code §18-8002.
  - c. If substantial evidence exists supporting the Court's ruling.
  - d. If Court abused its discretion in denying motions.
9. I hereby certify that this Notice of Appeal has been served upon Lori Meulenberg, Prosecutor, City of Sandpoint, by depositing a true and correct copy of in her mailbox at the Bonner County Courthouse, Sandpoint, Idaho.

DATED this 18 day of July, 2005.



Fred R. Palmer, Attorney for  
Defendant-Appellant



FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2005 AUG 25 A 9 45

LANE SCOTT  
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2004-0009931
	)	
vs.	)	RULE 35 MOTION TO MODIFY
	)	SENTENCE
DAN S. JACOBSON,	)	
	)	
Defendant.	)	
	)	

COMES NOW Defendant, through his attorney, Fred R. Palmer, and moves the Court, pursuant to Rule 35, ICR, to modify its July 18, 2005 Sentence in the above cause so as to authorize the entry of a second withheld judgment pursuant to Rule 10 ICR. The basis of this motion is the August 18, 2005 Notification of Prior Withheld Judgment Order from the Idaho Supreme Court (attached). It is submitted that the October 12, 1994 withheld judgment granted Defendant on the charge of Dog At Large, Bonner County Ordinance 204-4.1, should not disqualify a second withheld judgment given the nature and remoteness (1994) of the Dog at Large charge and the impact a DUI conviction would have on Defendant's ability to earn a living through business ventures in Canada.

RULE 35 MOTION TO MODIFY SENTENCE, Page 1

FRED R. PALMER  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983

Evidence and oral argument will be presented at time of hearing.

So Stipulated: \_\_\_\_\_  
Lori Meulenberg, Prosecutor, City of Sandpoint      Date

TO: Lori Meulenberg, Prosecutor, City of Sandpoint

YOU ARE HEREBY NOTIFIED that the above motion has been set for hearing on the ~~31st~~ day of August, 2005, at the hour of 1:30 o'clock p.m., or as soon thereafter as counsel may be heard, before the Honorable Debra Heise, Magistrate, in the courtroom of the above entitled court, Bonner County Courthouse, Sandpoint, Idaho.

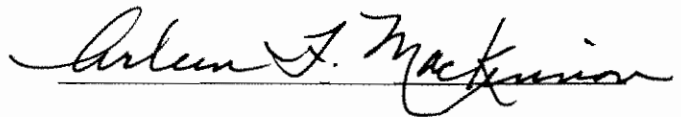
DATED this 24 day of August, 2005.



Fred R. Palmer, Attorney for Defendant

I hereby certify that a true and correct copy of the foregoing was ☒ hand delivered, ☐ faxed, ☐ mailed, postage prepaid, this 24 day of Aug., 2005 to:

Lori Meulenberg, Prosecutor  
City of Sandpoint  
Courthouse Mail  
Bonner County Courthouse



## IDAHO SUPREME COURT

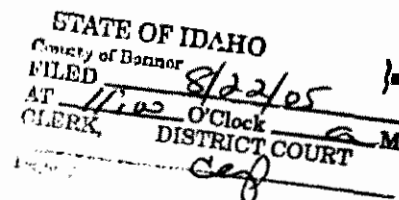
DATE: AUGUST 18, 2005

INFORMATION SYSTEMS OFFICE  
PO BOX 83720  
451 WEST STATE ST  
BOISE, ID 83720-0101

REPORT: WJS-130  
WITHHELD JUDGMENT REGISTRY  
TELEPHONE: (208) 334-2850  
PAGE: 1

\*\*\* NOTIFICATION OF -PRIOR- WITHHELD JUDGMENT ORDER \*\*\*

HONORABLE DEBRA A HEISE  
JUDGE OF THE MAGISTRATE DIV  
BONNER COUNTY COURTHOUSE  
215 SOUTH 1ST AVENUE  
SANDPOINT ID 83864-1305



Dear Judge:

Although this office provides presentence record checks for prior Withheld Judgments, it's not always possible for courts to obtain such information prior to sentencing. Therefore, to ensure judges are aware of any previous Withheld Judgments granted to a defendant, we provide this after-the-fact notification.

Accordingly, this notice is to advise you that the below-named defendant whom you recently granted a Withheld Judgment, has had one or more Withheld Judgments granted in the past. The following list details all of the Withheld Judgments on file for this defendant starting with the one you recently issued (number 1).

WJ.#	Defendant-Name	DL# or SSN	Date-Birth	Granted...	Expires...
1.	85398 JACOBSON, DAN STANLEY Docket: CR2004-9931/35170 ID Statute: 18-8004 ** Charge: DUI Note:	[REDACTED]		07/18 2005	07/18 2007
				Judge: D. HEISE County: BONNER	
2.	40740 JACOBSON, DAN STANLEY Docket: CR94-01045/24374 ID Statute: 204-4.1 ** Charge: OTHER: See Statute or Note. Note: DOG AT LARGE	QK315816A	11/25 1953	10/12 1994	10/17 1994
				Judge: B.A. BUCHANAN County: BONNER	

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

**COURT MINUTES**

**JUDGE: DEBRA HEISE**  
**REPORTER:**  
**CLERK: LYNNE ANDERSON**

**CASE NO. CR 2004-0009931**  
**DATE: 08/31/2005 01:30 PM**  
**TAPE: 05-862**

**STATE OF IDAHO**

**Vs DAN STANLEY JACOBSON**

Plaintiff / Petitioner

Defendant / Respondent

Atty: LORI MEULENBERG

Atty: FRED PALMER

**SUBJECT OF PROCEEDINGS  
CHARGE**

**MOTION WHY WHJD SHOULD NOT BE REVOKED**

INDEX	SPEAKER	PHASE OF CASE
2780	J	<b>Calls Case</b>
		<b>Present: DEF W/ FRED PALMER; LORI MEULENBERG FOR STATE</b>
	J	RECEIVED NOTICE FROM SUPREME COURT THAT DEF ALREADY RECEIVED A WHJD ON A DOG AT LARGE CASE. UNDERSTAND YOU ARE GOING TO FILE MOTION TO SET ASIDE THAT WHJD?
	FP	I WILL. WILL REQUIRE SEPARATE HEARING WITH COUNTY PROSECUTOR. WANT TO PROCEED WITH TODAY'S HEARING. FEEL THERE ARE EXTRAORDINARY CIRCUMSTANCES TO WARRANT THIS WHJD.
2826	J	CITE RULE
2858	FP	ARGUMENT. EXHIBIT WE SUBMITTED SUPPORTS OUR POSITION.
2907	J	PRIOR WHJD WAS IN 1992. NO EVIDENCE THAT HE HAS HAD A FELONY CONVICTION?
	LM	CORRECT
2946	FP	ARGUMENT. CITE PROBLEMS WITH DOING BUSINESS IN CANADA
	J	ANY OBJECTION?
2975	LM	CASE IS STAYED. HE HAS FILED A NOTICE OF APPEAL.
	J	THERE IS A STAY ORDER. THIS ISSUE WILL BE MOOT. WAS IT REPRESENTED TO ME THAT HE HAD NOT HAD ANY PRIOR WITH HELDS?
	FP	DON'T RECALL IF ADDRESSED.
3072	J	IF WE HAD KNOWN ABOUT THIS PRIOR WHJD, WOULD WE HAVE GRANTED ONE? THERE WAS NO OBJECTION FROM STATE AT TIME OF SENTENCING. IF PRIOR WHJD HAD BEEN ON A DUI RATHER THAN DOG AT LARGE, THIS WOULD BE ANOTHER MATTER. WITH HELD JUDGMENT STANDS
	FP	WANT AN ORDER?
	J	NOT NECESSARY. WILL LEAVE JUDGMENT AS IS
3153		END

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
COUNTY OF BONNER  
DISTRICT COURT

2006 OCT 24 A 9 36

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

DAN S. JACOBSON,

Defendant-Appellant.

Case No. CR-2004-0009931

AFFIDAVIT FOR RETENTION

STATE OF IDAHO

County of Bonner

) ss.

Fred R. Palmer, being duly sworn upon oath, deposes and states as follows:

1. I am your undersigned affiant and I make this affidavit based upon my personal knowledge.
2. Retention of Defendant's appeal in the above matter is requested. At no time has Defendant delayed or otherwise failed to comply with appellate procedures applicable to the above matter.
3. Defendant does not seek the retention, and does not object, to dismissal of the underlying judgment that he is guilty of DUI in the above matter.

DATED this 18 day of October, 2006.

  
Fred R. Palmer

AFFIDAVIT FOR RETENTION, Page 1

FRED R. PALMER  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529

SUBSCRIBED AND SWORN to before me, the undersigned notary public, this 18  
day of October, 2006.



Diana R. Leake

Notary Public

Residing at Sandpoint, Idaho

My Commission Expires: 8-1-2012

I hereby certify that a true and correct copy of the foregoing was ☒ hand delivered,  
☐ faxed, ☐ mailed, postage prepaid, this 24 day of Oct., 2006 to:

Lori Meulenberg, Prosecutor  
City of Sandpoint  
Courthouse Mail  
Bonner County Courthouse

Diana R. Leake

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO  
IN AND FOR THE COUNTY OF BONNER  
215 S. FIRST AVENUE  
SANDPOINT, IDAHO 83864

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

STATE OF IDAHO

VS.

DAN STANLEY JACOBSON

2006 DEC -6) A 9 22

MARIE SCOTT Case No: CR-2004-0009931  
CLERK DISTRICT COURT  
DEPUTY

ORDER OF DISMISSAL / RETENTION

Sandpoint City Prosecutor  
1123 Lake St / Courthouse Mail  
Sandpoint, ID 83864

Fred R. Palmer  
106 W Superior  
Sandpoint, ID 83864

ORDER OF DISMISSAL / RETENTION

Pursuant to the Notice of Proposed Dismissal dated: **October 5, 2006**, giving a show cause date of **October 26, 2006**,  
**IT IS HEREBY ORDERED** that all pending matters in this case are hereby

☐ **Dismissed** pursuant to Rule 48 (a) (2) of the Idaho Rules of Criminal Practice and Procedure. **IT IS FURTHER ORDERED** that any bonds posted be exonerated and any outstanding warrant be and is hereby quashed.

☒ **Retained.**

Dated: 12/1/06  
Judge: Steve Verby

Copies mailed, postage pre-paid to:

☒ Counsel, as listed above.

Dated: 12-6-06  
Marie Scott  
Clerk Of The District Court

By: Joshy Moreland  
Deputy Clerk

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2006 DEC 22 P 3:45

MARIE SCOTT  
CLERK DISTRICT COURT

*cm*  
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

**STATE OF IDAHO,**

Plaintiff/Respondent,

**v.**

**DAN STANLEY JACOBSON,**

Defendant/Appellant.

CASE NO: CR-2004-9931

**SCHEDULING ORDER**

A Notice of Appeal having been filed in this case, it is hereby ordered as follows:

1. The method of appeal shall be by judicial review of the record.
2. Upon receipt of the transcript, the Clerk of Court shall mail or deliver a notice of the lodging of the transcript to all parties.
3. The parties have twenty-one (21) days from the date of mailing of the notice of lodging the transcript to file any objections to the transcript and to notice the objections for hearing.
4. If no objections to the transcript are filed within 21 days, the transcript shall be deemed settled.



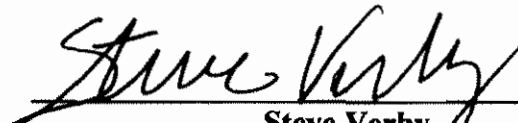
5. At the time the transcript is settled, the Appellant shall contact Cherie Moore, at (208) 265-1445, to request that the matter be set for oral argument at a time which allows the briefing schedule set forth in Paragraph 6 to be completed.

6. Briefing Schedule: After the transcript is settled, the parties shall submit briefs according to the following schedule:

- a. Appellant shall submit his or her initial Appellant's Brief within 35 days from the date the transcript is settled;
- b. Respondent shall file a reply brief (Respondent's Brief) within 28 days from the date the Appellant's Brief is filed;
- c. Appellant will then have 21 days from the date the Respondent's Brief is filed to submit a closing brief or to notify the court that the matter is fully submitted.

Failure of any party to timely comply with the above orders may be grounds for such action or sanctions as the court deems appropriate, which may include **dismissal** of the Appeal, pursuant to Idaho Criminal Rule 54.13.

Dated this 22 day of December, 2006.

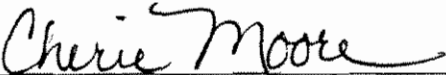
  
\_\_\_\_\_  
Steve Verby  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, U.S. postage prepaid, this 22 day of December, 2006, to:

Ms. Lori Meulenberg  
City Prosecuting Attorney  
1123 Lake Street  
Sandpoint, Idaho 83864

Mr. Fred Palmer  
Attorney at Law  
106 West Superior  
Sandpoint, Idaho 83864

  
\_\_\_\_\_  
District Court Secretary/Deputy Clerk

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT  
2007 JAN 31 P 3 19

MARIE SCOTT  
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	Case No. CR-2004-0009931
	)	
vs.	)	MOTION TO DISMISS
	)	
DAN S. JACOBSON,	)	
	)	
Defendant-Appellant.	)	


COMES NOW Defendant, through his attorney, Fred R. Palmer, and moves the Court to the underlying charge of DUI in the above cause. The basis of this motion is the unnecessary delay in processing Defendant's appeal.

The Court file shows Notice of Appeal was filed July 18, 2005, estimated transcription costs were paid July 27, 2005. A Notice of Lodging of Transcript was filed January 11, 2007.

Transcripts "shall" be lodged within 35 days of payment. *ICR 54.7(b)*. The purpose of Rule 54 is to grant a speedy determination of appeals. *Rule 54.18* The Court is authorized, where it serves "ends of justice" to dismiss. *Rule 48(a), ICR*

Oral argument will be presented at time of hearing.

DATED this 31 day of January, 2007.



Fred R. Palmer, Attorney for Defendant

I hereby certify that a true and correct copy of the foregoing was ☒ hand delivered, ☐ faxed, ☐ mailed, postage prepaid, this 31 day of January, 2007 to:  
Lori Meulenberg, Prosecutor, City of Sandpoint, Courthouse Mail, Bonner Co. Courthouse

Diana R. Leake

MOTION TO DISMISS, Page 2

**FRED R. PALMER**  
ATTORNEY AT LAW  
106 W SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
FAX (208) 263-8007

- 61 -

FRED R. PALMER  
 Attorney at Law  
 106 West Superior Street  
 Sandpoint, ID 83864  
 208-263-8529  
 ISB #1716

STATE OF IDAHO  
 COUNTY OF BONNER  
 FIRST JUDICIAL DISTRICT

2007 MAR 12 P 2:00

MARIE SCOTT  
 CLERK DISTRICT COURT  
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO, )

Plaintiff-Respondent, )

Case No. CR-2004-0009931

vs. )

MOTION TO EXTEND TIME

DAN S. JACOBSON, )

Defendant-Appellant. )

COMES NOW Defendant, through his attorney, Fred R. Palmer, and moves the Court to extend time to file Appellant's Reply Brief to April 15, 2007. The basis for this motion is that counsel for Defendant is out of the country the month of March.

DATED this 2 day of March, 2007.

*Fred R. Palmer*

Fred R. Palmer, Attorney for Appellant

So Stipulated:

*Lori T. Meulenberg*  
 Lori Meulenberg, Prosecutor, City of Sandpoint

3-12-07  
 Date

MOTION TO EXTEND TIME

FRED R. PALMER  
 ATTORNEY AT LAW  
 106 W. SUPERIOR  
 SANDPOINT, IDAHO 83864  
 (208) 263-8529  
 Fax (208) 263-8983

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2007 MAR 21 A 4:04

MARIE SCOTT  
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO, )

Plaintiff-Respondent, )

vs. )

DAN S. JACOBSON, )

Defendant-Appellant. )

Case No. CR-2004-0009931

ORDER EXTENDING TIME

Based upon the stipulation of the parties and there being good cause, now therefore

IT IS HEREBY ORDERED that the time to file Appellant's Reply Brief is extended  
to April 15, 2007.

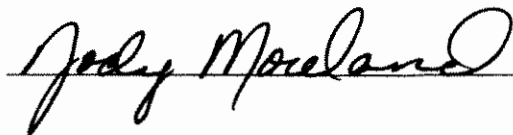
DATED this 21 day of March, 2007.

  
District Court Judge

I hereby certify that a true and correct copy of the foregoing was \_\_\_\_\_ hand delivered,  
\_\_\_\_\_ faxed, ☒ mailed, postage prepaid, this 23 day of March 2007 to:

Lori Meulenberg, Prosecutor  
City of Sandpoint  
Courthouse Mail  
Bonner County Courthouse

Fred R. Palmer, Attorney for Appellant  
106 West Superior Street  
Sandpoint, ID 83864



ORDER EXTENDING TIME

FRED R. PALMER  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

**COURT MINUTES**

**JUDGE: STEVE VERBY**  
**REPORTER: CINDY DURKEE**  
**CLERK: CHERIE MOORE**  
**DIVISION: DISTRICT**

**CASE NO. CR-2004-0009931**  
**DATE: 06/04/2007 TIME: 02:00 PM**  
**TAPE: 07-503 and 07-504**

**STATE OF IDAHO**

**vs DAN STANLEY JACOBSON**

Plaintiff / Petitioner

Defendant / Respondent

Atty: **LORI MEULENBERG**

Atty: **FRED PALMER**

**SUBJECT OF PROCEEDINGS**  
**CHARGE**

**MOTION TO DISMISS and ORAL ARGUMENT**

INDEX	SPEAKER	PHASE OF CASE
1393	J	<b>Calls Case</b>
		<b>Present:</b> DEFENDANT NOT PRESENT, FRED PALMER, LORI MEULENBERG
	J	MR. PALMER, YOU FILED A MOTION TO DISMISS – PREJUDICE FOR THE DEFENDANT – NO AFFIDAVIT INDICATING PREJUDICE
	FP	16 MONTH DELAY IN PROCESSING OF THE APPEAL – CONSTITUTIONAL DENIAL OF SPEEDY TRIAL – NO AFFIDAVIT SETTING FORTH BASIS – DON'T THINK IT'S NECESSARY – HE WAS CHARGED WITH DUI IN 2004 – NOW 2 YEARS LATER – THERE WAS A STAY IMPOSED BY THE COURT – PASSAGE OF THAT MUCH TIME – IF SUCCESSFUL ON APPEAL – PROCESS HIS CASE THROUGH TRIAL – 16 MONTH DELAY IN PROCESSING THE APPEAL – THERE ARE MULTIPLE PROCEDURAL DEADLINES SET FORTH IN THE APPEAL WHICH HAVE NO REQUIREMENT OF PREJUDICE – ALL GO TO EFFICIENCY OF THE APPEAL – FEEL THAT IT'S NOT NECESSARY TO FILE AN AFFIDAVIT
1567	J	COURT CONCLUDES THAT SUCH DISMISSAL WOULD SERVE THE COURT JUSTICE – IN <i>State v. Dixon</i> , 140 IDAHO, 301, RULE REQUIRES COURT'S REASONING FOR DISMISSAL – RULE STATES TRANSCRIPT SHALL BE LODGED AND AM AWARE THAT THE TRANSCRIPT WAS NOT LODGED FOR 16 MONTHS – MR. PALMER, GOING TO ASK YOU TO WHAT I SHOULD DO – HAS YOUR CLIENT MOVED AWAY, EXTRA EXPENSE TO RETURN – NOT SURE THERE IS PREJUDICE – WHAT REASONS?
	FP	REASONING BEHIND RIGHT TO SPEEDY TRIAL – PURPOSE OF THE RULES REGARDING APPELLATE RULES FOR APPEAL – INTENDED TO PREVENT DELAYS WHICH CREATE A VARIETY OF PROBLEMS – LIKE MEMORY OF WITNESSES, AVAILABILITY OF WITNESSES, PRESERVATION OF EVIDENCE, CALIBRATION RECORDS, AND ANY OTHER EVIDENCE THAT MIGHT COME INTO PLAY – ABILITY OF MR. JACOBSON TO DEMONSTRATE PREJUDICE BECAUSE WE DON'T KNOW WHAT COURT'S RULING IS GOING TO BE – DON'T KNOW IF GOVERNMENT HAS CALIBRATION RECORDS – BELIEVE THERE IS ONLY A 2 YEAR REQUIREMENT – REQUIRES A DEFINITE PROOF OF EVIDENCE – LET'S SAY 10 YEARS HAVE PASSED – DO WE HAVE TO COME UP WITH PROOF? IS 18 MONTHS ENOUGH? – TOUGH QUESTION – WHAT WERE REASONS FOR DELAY AND WHETHER OR NOT IT'S NECESSARY TO SANCTION IN THE FORM OF A DISMISSAL IN THIS CASE AND PREVENT THESE TYPES OF DELAYS IN THE FUTURE – IF YOU WERE TO DISMISS THE CASE I THINK IT WOULD ENCOURAGE THE PROCESSING IN A TIMELY MANNER IN THE FUTURE

	J	MS. MEULENBERG?
	LM	ASK COURT TO DENY THE MOTION TO DISMISS – HEALTH ISSUES OF PERSON IN CHARGE OF DOING THE TRANSCRIPT – COSTS OF TRANSCRIPT PAID IN JULY OF 2005 – THERE WAS NO ACTION TAKEN BY THE DEFENSE UNTIL THE MOTION IN 2007 FILED TO DISMISS FOR NOT HAVING THE TRANSCRIPT – IF TRUE PREJUDICE, SEEMS DEFENSE WOULD HAVE BROUGHT BEFORE THE COURT BEFORE THEN – HE HAS BENEFITED FROM EXTENSION AT THIS POINT
2011	J	HE MAY DISAGREE WITH YOU
	LM	THINK THAT DISMISSAL OF AN APPEAL IS NOT HOW WE WOULD LIKE TO SEE THIS HAPPEN – DON'T THINK BURDEN SHOULD BE ON THE STATE – SHOULDN'T HAVE TO KEEP CHECKING ON IT
	J	STATE'S BURDEN TO PROSECUTE THE CASE – FROM A LOGICAL STANDPOINT, AT WHAT POINT IS THE RESPONSIBILITY SHARED?
	LM	STATE WOULD ACCEPT RESPONSIBILITY WHEN THERE IS A SPEEDY TRIAL ISSUE – WHEN WE DON'T, WE LOSE THE CASE – I HAVE NO REPERCUSSION – WHEN IT BECOMES THEIR APPEAL, DON'T THINK THAT IS THE SAME AS TRYING TO GET A CONVICTION – SHOULD FALL ON DEFENSE AS WELL
	J	MR. PALMER
2185	FP	WHAT IS THE POSITION OF MR. JACOBSON SHOULD HE HAVE OTHER PROBLEMS WITH THE LAW? THESE ARE HYPOTHETICAL AND DON'T NECESSARILY EXIST – SPECULATION
	J	GOING TO TAKE THIS ISSUE UNDER ADVISEMENT – NOT GOING TO RULE – GOING TO HEAR THE ORAL ARGUMENT UNDER APPEAL
	J	MR. PALMER – READY?
2347	FP	ISSUE I SEE IS A DUE PROCESS QUESTION – WHETHER OR NOT MR. JACOBSON COULD MAKE PHONE CALLS – IN <i>Matthew v. Eldridge</i> , SHOULD BE CONSIDERED – NOT ALLOWING TELEPHONE ACCESS COULD INVADE PRIVACY ACT – NOT DEVELOP CULPABILITY CONCEPT – ALLOWING TELEPHONE CALL IS A MINIMAL BURDEN ON THE JAIL – DEFENDANT WANTED TO MAKE ANOTHER PHONE CALL – WHETHER OR NOT COURT FEELS THERE IS AN EXISTING PROCEDURE BY THE JAIL TO DENY MR. JACOBSON THE PHONE CALL – ARGUING THAT ALLOWING MR. JACOBSON TO MAKE ANOTHER PHONE CALL TO BAIL OUT WHETHER IT'S HIS SECOND OR HIS THIRD – HAS IMPACT ON THE GOVERNMENT – HE WAS UPSET AT THE BAIL BONDSMAN, NOT AT THE JAIL – VIDEO CONFIRMED THAT HE IS NOT ACTING OUT IN ANY WAY – SUPPRESSION HEARING EXPLAINS THAT THERE WERE OTHER PEOPLE WAITING TO BE BOOKED – IF COURT TO GRANT THIS APPEAL – WOULD BE A MESSAGE TO BONNER COUNTY JAIL THAT IN CIRCUMSTANCES LIKE THIS WITH NO SECURITY ISSUE, THAT YOU HAVE TO GIVE THEM FULL PROCEDURAL DUE PROCESS RIGHT TO SECURE THEIR ROOTS
	J	HOW MANY PHONE CALLS ARE TO BE ALLOWED – PARTICULARLY IN DUI CASES – BECAUSE AN INDIVIDUAL UNDER THE INFLUENCE SOMETIMES LOSES CONTROL – NOT SAYING THAT'S THE ISSUE HERE
	FP	NEXT CALL WAS TO HIS WIFE
	J	THOUGHTS ON ISSUE AS IT RELATES TO UNLIMITED ACCESS TO THE PHONE – NO COMMUNICATION AS TO WHY PHONE CALL NEEDED TO BE MADE
2958	FP	FINE DISTINCTION IN <i>Carr</i> CASE WHICH ISN'T REALISTIC – SHOULD BE GIVEN A PRIORITY – SECOND SHOT AT A PHONE CALL – EVIDENCE IS WASTING AWAY
	J	IF MR. JACOBSON HAD CALLED YOU THEN YOU WOULD HAVE WANTED TO GET ANOTHER TEST
	FP	NOT JUST AN INDEPENDENT TEST – OTHER PEOPLE SEE WHAT YOUR CONDITION IS
	J	MS. MEULENBERG?
	LM	DOES JAIL HAVE TO DISTINGUISH WHICH CASE NEEDS MORE PRIORITY?



		NEED TO LOOK AT THAT IN GENERAL POPULATION AT THE JAIL – WHOSE LIBERTY IS MORE IMPORTANT? - NOT A FAIR BURDEN TO PUT ON THE STATE – TWO BOOKING PEOPLE COME AND ESCORT HIM AWAY
	J	2 PEOPLE WHO COME IN AND TAKE HIM OUT – THAT IS SIMPLY JAIL POLICY
	LM	AGREE WITH COURT – THEY FELT SOME RISK THAT THEY NEEDED TO FOLLOW THAT POLICY – HE WAS ALLOWED UNLIMITED ACCESS TO THE PHONE UNTIL HIS CONDUCT STOPPED HIM
	J	LET'S GO BACK
3478	END	TAPE #07-503
01	BEGIN	TAPE #07-504
	J	MAY BE PERSONALITY CONFLICT – DUE PROCESS RIGHTS – ONLY GOING TO LET CERTAIN PEOPLE MAKE PHONE CALLS – HOW DO WE OBJECTIFY THAT ISSUE?
	LM	NO REASON OR GRUDGE AGAINST HIM
	J	MR. PALMER'S POINT NOT SHOWING ANY ATTITUDE TOWARDS A BAIL BONDSMAN
	LM	JAIL HAS NO IDEA WHO HE IS TALKING TO - THINK THAT IN ORDER FOR GOVERNMENT TO ALLOW PERSON ARRESTED FOR DUI TO HAVE UNLIMITED ACCESS TO A PHONE – THE JAIL WAS GIVING HIM THAT ACCESS – THEY WERE BEING OVERLY FAIR
	J	WHERE IS IT IN THE JAIL POLICY THAT SOMEONE WHO BECOMES UPSET THEY CAN'T USE THE PHONE
	LM	WHEN SECURITY OF INMATES AND JAIL STAFF THAT BECOMES AN ISSUE THAT THEY HAVE AN OBLIGATION – DO NOT THINK IT WOULD BE FAIR TO JAIL STAFF TO WAIT UNTIL THINGS GET OUT OF CONTROL – NEED TO STOP IT AS SOON AS POSSIBLE
193	J	THERE APPEARS TO BE A TIMING ISSUE RELATING TO DUE PROCESS – AGREE THAT THE TIME FACTOR COULD BE MORE IMPORTANT WITH REGARD TO ANOTHER ISSUE?
	LM	NO DOUBT THAT COURT HAS FOUND LOSS OF BLOOD ALCOHOL CONTENT – NEVER BEEN AN ISSUE – AS FAR AS Carr, I THINK IT'S DIFFERENT WHEN YOU HAVE HAD THE OPPORTUNITY TO MAKE THE CALL – FROM STATE'S PERSPECTIVE, IT WAS THE DEFENDANT'S DOING THAT PROHIBITED HIM FROM USING THE PHONE – HE WAS ALLOWED ACCESS AGAIN TO MAKE ANOTHER PHONE CALL – STATE WAS NOT DENYING HIM HIS RIGHTS – STATE DID EVERYTHING WELL – HE WAS BONDED OUT – STATE SHOULD NOT GUESS WHO HE WAS GOING TO CALL – BASED ON THE FACTS, THE JAIL PROCEEDED PROPERLY
463	J	YOUR LAST COMMENTS INDICATE THAT SHORTLY AFTER HE HAD CHANCE TO MAKE PHONE CALL, HE WAS BAILED OUT WITHIN A RELATIVELY SHORT TIME – DOESN'T THAT PROVE MR. PALMER'S POINT?
	LM	HARD TO SPECULATE AT THIS TIME WHAT WOULD HAVE HAPPENED
	J	THANK YOU – MR. PALMER?
	FP	KEY THING IS REQUEST FOR TELEPHONE ACCESS – JACOBSON'S TESTIMONY – UPSET THAT JAIL WANTED A CO-SIGNER – DID NOT PHYSICALLY RESIST ANYONE – JAILER KNEW WHY HE WAS UPSET – JUDGE HEISE FOUND THAT THERE WAS NOT ANGER DIRECTED TOWARD THE JAIL – PAGE 44 OF TRANSCRIPT, LINE 24, ALL TREATED THE SAME – SEQUENTIAL THING – PAGE 46 STATES OTHER PEOPLE WHO WERE THERE – 5 INMATES WERE TRANSFERRED FROM THE KOOTENAI COUNTY JAIL – POLICY OF THE JAIL – MS. INMAN WAS CANDID WHEN SHE SAID THAT IF JACOBSON HAD NOT HAD AN ATTITUDE WITH STAFF, HE WOULD HAVE BEEN ABLE TO CONTINUE TO MAKE PHONE CALLS – THEY ARE UNLIMITED – POLICY AT THE JAIL IS THAT THEY CAN MAKE AS MANY CALLS AS NECESSARY
746	J	TROUBLE WITH MY ROLE ACTING AS APPELLATE – COURT CANNOT SUBSTITUTE IT'S OPINION OF JUDGE OF LOWER COURT – JUDGE HEISE, ON PAGE 69, COMMENTS ON MR. JACOBSON'S ATTITUDE – HOW DO I

		SUBSTITUTE THAT CONCLUSION FOR THE FINDING AND FACT
	FP	ATTITUDE DIRECTED TOWARDS THE BAIL BONDSMAN AND NOT THE JAIL
	J	ANY FURTHER ARGUMENT?
	FP	NO
856	J	VERY INTRIGUING ISSUES – I WAS PREPARED TO RULE FROM THE BENCH BUT AFTER ARGUMENT I DO WISH TO TAKE A LOOK AT THE VIDEO AND REVIEW THE BRIEFING – WILL TAKE UNDER ADVISEMENT
892	END	

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2007 AUG -9 P 1:44

MARIE L. J. J.  
CLERK DISTRICT COURT  
*cm*  
DEPT. 10

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

DAN S. JACOBSON,

Defendant/Appellant.

CASE NO. CR-2004-9931

**DECISION ON APPEAL**

This case involves the concept of due process as it relates to the rights of an individual charged with driving under the influence of intoxicants. Because factual determinations that have yet to be made may change the trial court's analysis, this matter is remanded for further findings concerning: (1) whether Mr. Jacobson requested an additional phone call after his initial call to a bail bondsman; and (2) whether Mr. Jacobson, due to the exigencies attendant to the metabolism of alcohol, should have been booked earlier, and thus avoided a nearly four hour delay after his arrest and before his release.

**I. INTRODUCTION**

The Appellant, Dan Jacobson, entered a conditional guilty plea to misdemeanor Driving Under the Influence, a violation of Idaho Code § 18-8004, after his motion to suppress his breath

alcohol content (BAC) results was denied. On appeal, he argues that his due process rights were violated when he was denied meaningful access to a telephone in the hours immediately following his arrest. He contends that had he been provided telephone access, he could have either bonded out or contacted an attorney to obtain his release. Upon being released, Mr. Jacobson states he could have then obtained an independent test to measure his blood alcohol content and obtain other exculpatory evidence. Mr. Jacobson also seeks to dismiss the underlying charge based on the ground that there was an unreasonable delay in processing his appeal.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

Dan Jacobson was arrested for Driving Under the Influence of Alcohol just after 1:00 a.m. on December 29, 2004, by Officer Timothy Fry of the Sandpoint City Police Department. He was transported to the Bonner County Jail where two breath tests were obtained to determine his blood alcohol content. The first test was taken at 1:47 a.m. with a result of .170. The second test was administered at 1:50 a.m. with a result of .181. Officer Fry left the jail at 2:24 a.m.

One hour after the state's tests were obtained, at approximately 2:54 a.m., Mr. Jacobson was allowed to make one or two phone calls. It is unclear whether the initial phone call resulted in a connection with the party being called. One of the phone calls was to a bail bondsman. During the phone call, Mr. Jacobson became agitated because the bondsman wanted a "co-signer" before he would post a five hundred dollar (\$500) bond for Mr. Jacobson's release, even though Mr. Jacobson had credit cards that would cover the bond. Booking of Mr. Jacobson had

not yet occurred at the time the phone call was made. He was returned to the holding cell after the phone call because he displayed what a jail document described as an "attitude." Consequently, he was required to wait to be booked before he was allowed an additional call. His booking was delayed because jail policy required that four other prisoners who arrived at the jail before he did would be booked before him.

Concerning Mr. Jacobson's "attitude," it is difficult to discern what is meant by the jailer's use of the term in this context. There is no doubt that he was upset with the bondsman, but it is unclear whether Mr. Jacobson was causing trouble for the jailers and affecting their ability to perform necessary tasks. Sergeant Inman testified concerning what is usually meant in the jail log when an entry is made that a defendant has an "attitude": "Just answering smart questions you know . . . or answers to whatever questions we have. They don't cooperate with us."

Sergeant Inman testified on cross-examination that she did not have an "independent recollection" of what Mr. Jacobson did that resulted in him being taken away from the phone. According to Sergeant Inman, the notation on the jail's log sheet that Mr. Jacobson had an "attitude" at 3:01 a.m. would mean that "he was arguing with the deputy or not doing what was asked of him so he was put back into holding." Earlier in her testimony she indicated that if a defendant displays an attitude "we don't deal with them until they want to cooperate, to follow - you know what we need to get done."

The jail has two policies that relate to the determination of this appeal. The first policy allows phone calls. Before a defendant is booked, he or she has the ability to make what

Sergeant Inman characterized as “numerous” phone calls. “We don’t limit the phone calls they make.” The second policy involves the jail’s “first come - first served” procedure followed for bookings. Regardless of the type of crime that the person is alleged to have committed or the reasons for their presence in jail, the jail books individuals in the order that they arrive at the jail.

At approximately 5:00 a.m., after booking all other individuals, the jail staff finished booking Mr. Jacobson. The jail then allowed him to make another phone call at 5:26 a.m., about four and one-half hours after his arrest and three and one-half hours after the state obtained the BAC test results. He bonded out at 6:44 a.m.

After his motion to suppress was denied, Mr. Jacobson entered a conditional plea of guilty to a misdemeanor violation of Idaho Code § 18-8004, and was sentenced on July 18, 2005. He filed a Notice of Appeal on July 18, 2005. On July 19, 2005, Judge Heise entered an order staying execution of the Judgment and Sentence pending appeal in the District Court. The estimated transcript costs were paid July 27, 2005. A Notice of Lodging of Transcript was filed January 11, 2007.

Mr. Jacobson filed a Motion to Dismiss the complaint on January 31, 2007. The Motion to Dismiss as well as oral argument on appeal were heard by the court on June 4, 2007, after which the court took the matter under advisement.

### **III. ANALYSIS**

#### **A. Standard of Review on Appeal**

“Upon an appeal from the magistrate to the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate

court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the Idaho appellate rules.” Idaho Criminal Rule 54.17(a). The district court defers to the trial court’s findings of fact when supported by substantial evidence, but exercises free review over questions of law. *State v. O’Neill*, 118 Idaho 244, 245, 796 P.2d 121, 122 (1990); *State v. Emory*, 119 Idaho 661, 662, 809 P.2d 522, 523 (Ct. App. 1991).

## **B. Motion to Suppress**

Dan Jacobson argues that his motion to suppress should have been granted because his due process rights were violated when he was denied meaningful access to a telephone for two and one-half hours to arrange bail. He contends that this delay interfered with his ability to gather exculpatory evidence.

There does not appear to be any Idaho case directly on point which addresses the specific facts presented by this appeal. Other cases, however, touch upon similar issues and require evaluation in order to determine the issues presented. In sections 2 through 6 of this portion of the decision, Idaho cases addressing related issues will be examined. Section 7 analyzes the due process considerations in the context of the facts presented by this case.

### **1. Standard of Review for Motion to Suppress**

“A trial court’s decision on a motion to suppress presents mixed questions of law and fact.” *State v. Shelton*, 129 Idaho 877, 879, 934 P.2d 943, 945 (Ct. App. 1997); *State v. McAfee*, 116 Idaho 1007, 1008, 783 P.2d 874, 875 (Ct. App. 1989). The appellate court defers to the trial court’s findings of fact if they are supported by the evidence. *State v. Connor*, 124 Idaho 547, 548, 861 P.2d 1212, 1213 (1993). However, the trial court’s determination as to whether

constitutional requirements have been satisfied in light of the facts found are freely reviewed.

*State v. Medley*, 127 Idaho 182, 185, 898 P.2d 1093, 1096 (1995).

## **2. Independent Testing After Arrest**

Pursuant to Idaho Code § 18-8002(4)(d) an individual who is suspected of driving under the influence has a right to procure an independent BAC test:

After submitting to evidentiary testing at the request of the peace officer, he may [the defendant], when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

*See also* IDAHO CODE § 18-8002(3)(e) ("After submitting to evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.").

In *State v. Madden*, the defendant was arrested for driving under the influence. 127 Idaho 894, 895, 908 P.2d 587, 588 (Ct. App. 1995). Prior to or during booking, she requested an independent blood test and asked to speak to her attorney. *Id.* The police refused her access to a telephone for approximately two hours after her initial request for an independent test and for three and one-half hours after her arrest. *Id.* The court concluded that by refusing the defendant access to a telephone, the officers denied Ms. Madden a meaningful and timely opportunity to make her own arrangements for an additional test. *Id.* at 896-97, 908 P.2d at 589-90. The court also noted that "[t]he independent test acts as a safeguard which 'provides the licensee with the opportunity to test the sufficiency of the original test results, and avoid the consequences of an



erroneous deprivation of his or her driving privileges.” *Id.* at 896, 908 P.2d at 589 (citing *Matter of McNeely*, 119 Idaho 182, 191, 804 P.2d 911, 920 (1990)).

### **3. Conferring with an Attorney**

On the same day the *Madden* opinion was released, the Idaho Court of Appeals also decided *State v. Carr*. 128 Idaho 181, 911 P.2d 774 (Ct. App. 1995). Like *Madden*, Ida Carr was arrested for driving under the influence. *Id.* at 182, 91 P.2d at 775. While she was being read the standard police advisory form, she requested access to a telephone in order to contact an attorney. *Id.* Ms. Carr was moved to a holding cell where she again asked if she could speak to an attorney. *Id.* She then made several more requests to contact an attorney. *Id.* The officers denied her requests until five hours after her arrest when she was permitted access to the telephone. *Carr*, 128 Idaho at 182, 91 P.2d at 775. *Carr* is distinguished from *Madden* in that Carr did not assert her statutory right to an independent BAC test; however, the court found that the defendant was denied her due process rights because of the delay in allowing her to use a phone to contact counsel. *Id.* at 185, 911 P.2d at 778. In *Carr* the court stated:

[W]hen a person is arrested for DUI and given an evidentiary BAC test, that person must be allowed, at a minimum, to make a phone call upon request to do so. Such contact provides the means through which the arrestee is able to gather evidence tending to refute the State’s evidence of intoxication and thereby preserve the “right to a fair opportunity to defend against the State’s accusations.” *Chambers, supra*. [*Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038, 1045, 35 L.Ed.2d 297 (1973).] For example, the person contacted by the arrestee could facilitate the administration of an independent BAC test, a right guaranteed by I.C. § 18-8002(4)(d).

*Id.* at 184, 911 P.2d at 777.

#### **4. Use of a Telephone**

In 1997, the Court of Appeals again addressed the issue of due process for individuals charged with the crime of driving under the influence of intoxicants. In *State v. Shelton*, the defendant submitted to a breath test after he was arrested. 129 Idaho at 878, 934 P.2d at 944. Mr. Shelton was also informed that he could obtain an additional test at his own expense after the police conducted their evidentiary test. *Id.* He argued that his rights were violated because, among other things, the deputy sheriff did not advise him of his right to immediate access to a telephone following the administration of the evidentiary BAC test. *Id.* Mr. Shelton, however, did not assert his right to an independent BAC test, nor did he request the use of a telephone. *Id.* The court of appeals concluded that because Mr. Shelton failed to assert his right to an independent BAC test, the state did not violate his constitutional right to due process. *Id.* at 880, 934 P.2d at 946. The court stated:

Furthermore, access to a telephone at this point in the detention is important only in that it is the mechanism through which a DUI detainee executes his right to a second test or to otherwise pursue evidence regarding his or her state of intoxication. Once a request has been made for the second evidentiary test or to use a telephone, the state may not interfere with or deny the detainee access to a telephone to arrange for such a test.

*Shelton*, 129 Idaho at 880, 932 P.2d at 946.

#### **5. The "Inherent Exigency" in DUI Cases**

The Court of Appeals revisited the due process issue in 2003 in *State v. Cantrell*, 139 Idaho 409, 80 P.3d 345 (Ct. App. 2003). Mr. Cantrell was arrested at approximately 3:30 p.m. *Id.* at 410, 80 P.3d at 346. He submitted to two breath tests around 4:30 p.m. *Id.* He was then

offered a phone call, which he refused, and was placed in a holding cell. *Id.* Around 5:00 p.m., Mr. Cantrell's son arrived at the jail with a bail bondsman to post bail. *Id.* Mr. Cantrell bonded out between 8:15 and 8:30 p.m. *Cantrell*, 139 Idaho at 410, 80 P.3d at 346. The defendant argued that his due process rights were violated because of the three hour delay in releasing him from jail. *Id.* The court stated that if a detainee affirmatively asserts the right to an independent BAC test, the state may not interfere with or deny the detainee the opportunity to make arrangements for such testing. *Id.* at 411, 80 P.3d at 347. The court concluded that Mr. Cantrell's rights were not violated because he never requested independent testing nor did he seek to use the telephone to arrange for independent testing. *Id.* at 412, 80 P.3d at 348. Further, Mr. Cantrell did not provide evidence to show that the delay in his release was caused by the jail. *Id.* However, the court did reiterate the special circumstances presented in DUI cases that call for a specific standard for determining whether due process rights have been violated. The court stated:

The appellate courts of this state have recognized that there is an "inherent exigency" in a DUI setting due to the destruction of the evidence by the metabolism of alcohol in the blood. *State v. Woolery*, 116 Idaho 368, 370, 775 P.2d 1210, 1212 (1989); *State v. Madden*, 127 Idaho 894, 896, 908 P.2d 587, 589 (Ct. App. 1995). Therefore, a detainee's opportunity to gather exculpatory evidence in such cases lasts only a short time following the arrest and administration of the state's testing. *State v. Carr*, 128 Idaho 181, 184, 911 P.2d 774, 777 (Ct. App. 1995).

*Cantrell*, 139 Idaho at 411, 80 P.3d at 347.

## **6. The Requirement that the Defendant Request Independent Testing or Access to a Telephone**

The Court of Appeals' most recent decision on this issue came earlier this year in *State v. Hedges*, 143 Idaho 884, 154 P.3d 1074 (Ct. App. 2007). In *Hedges*, the defendant was pulled over for failure to dim his headlights at 1:33 a.m. *Id.* at \_\_\_, 154 P.3d at 1075. The officer who made the stop smelled alcohol on Mr. Hedges' breath and conducted a field sobriety test. *Id.* Mr. Hedges was then taken to the police station for a breath test. *Id.* After discussing the test with the police officer, the defendant agreed to take the test, but also stated the he would "go get a blood test on his own." *Id.* After being booked, Mr. Hedges contacted a bail bondsman. *Hedges*, 143 Idaho at \_\_\_, 154 P.3d at 1076. He was released on bond at 5:00 a.m. but did not obtain an independent test because he believed too much time had elapsed. *Id.* at \_\_\_, 154 P.3d at 1076. He argued that his due process rights were violated. *Id.* Mr. Hedges did not request the use of a phone, nor did he ask to arrange for an independent BAC test. *Id.* The court held that law enforcement did not affirmatively deny Mr. Hedges the use of a phone. *Id.* at \_\_\_, 154 P.3d at 1079. The court also found that the defendant did not indicate a desire to arrange for an independent BAC test while in custody. *Hedges*, 153 Idaho at \_\_\_, 154 P.3d at 1079. The court did not determine whether the jail staff created an unreasonable delay in releasing Mr. Hedges such that it denied or materially interfered with his ability to obtain a meaningful, independent BAC test upon release. *Id.*

## **7. Due Process of Law**

### **a. Asking for a Phone Call Invokes Due Process Rights**

In the context of a DUI arrest, due process of law requires that law enforcement provide the accused with a “reasonable opportunity” to procure a timely BAC test through his/her own efforts. *Hedges*, 143 Idaho at \_\_\_, 154 P.3d at 1077. Although the statutory provision mandates that a defendant be allowed such testing “when practicable,” the ability to prepare a defense after arrest is derived from constitutional provisions that allow a defendant to obtain other exculpatory evidence. *See also* I.C. § 18-8002(4)(d). The testimony of witnesses who are not employed in law enforcement as to the accused’s speech, coordination, lack of confusion, and physical appearance may be extremely important at the time of trial if such observations are obtained in a relevant time frame.

The ability to mount a defense is significantly diminished if the incarcerated individual has no access to objective third persons that can test or observe. Because the telephone is the lifeline to securing a defendant’s constitutional and statutory rights, precluding access to a phone also precludes one’s exercise of these critical rights. In this context, *Hedges* discusses *Madden* with approval; *Madden* found that a two hour telephone call delay “deprived the defendant of a meaningful and timely opportunity to arrange for an independent BAC test . . . .” *Hedges*, 143 Idaho at \_\_\_, 154 P.3d at 1077. Similarly, the *Hedges* court focused on the *Cantrell* court’s finding that there could not be a due process violation (despite a three hour delay in releasing him from custody after his bondsman arrived) because Mr. Cantrell did not assert his right to have an independent test, or make a request for a phone call, or ask to contact an attorney. *Id.*

In *Hedges*, the court's primary focus was what type of request the defendant would have to make in order to invoke his right to an independent test and start the due process clock ticking. The court established a bright line test and held that the accused "must make a clear and unambiguous statement of his or her desire to obtain an independent BAC test, such that a reasonable police officer under the circumstances would understand the statement to be an affirmative assertion thereof." *Hedges*, 143 Idaho \_\_\_, 154 P.3d at 1078. The court did not address the issues of a request for phone calls or a request to contact an attorney.

The right to secure an independent test and obtain other exculpatory evidence is inextricably tied to the ability to obtain one's freedom and have access to legal counsel. Law enforcement has a duty not to interfere with or affirmatively deny a defendant access to a phone once a request for an independent test is made. *Id.* at \_\_\_, 154 P.3d at 1077 (citing *State v. Rountree*, 129 Idaho 146, 150, 922 P.2d 1072, 1076 (Ct. App. 1996)); *see also Madden*, 127 Idaho at 896, 908 P.2d at 589. A similar obligation exists when one requests access to a phone to obtain one's freedom. Whether that freedom is to be obtained by calling a spouse, bondsman, or lawyer makes no difference. Because the goal of obtaining a test and/or exculpatory evidence is founded on the ability to communicate and thus obtain one's freedom, a citizen's due process and statutory rights would be hollow rights indeed if they could be made impossible to obtain by simply precluding phone access.

In Mr. Jacobson's case, the findings of fact concerning whether Mr. Jacobson actually requested additional phone calls is inconclusive. At the hearing for the motion to dismiss/suppress held on April 13, 2005, before Judge Heise, Mr. Jacobson testified as follows:

Mr. Jacobson: I asked to use the phone for a second phone call. I didn't tell them what for.

Ms. Meulenberg: I have nothing further of this witness.

The Court: At what point did you ask that?

Mr. Jacobson: Right at the moment I finished the first phone call. But at that point, you know –

The Court: Just a second. You just said that you didn't say anything to the deputy after you finished that first phone call and now you're telling me that you asked him or her to use the – to – that you wanted to do a second call?

Mr. Jacobson: I said that I didn't ask her about getting an independent breath test. I wanted to make a second phone call but it was fairly obvious that she wasn't gonna –

The Court: I wrote down that when you responded to Mr. Palmer's question that you did not say anything to the deputy after you placed the first call. Maybe I miss wrote. Now you're saying that after the first call you asked the deputy to make a second call?

Mr. Jacobson: I didn't ask for a separate breath test.

The Court: That's not what I said.

Mr. Jacobson: Okay.

The Court: After you hung up the phone on the first call, did you – what did you say to the deputy.

Mr. Jacobson: "Can I make another call? Not until you get a better attitude" is her response.

The Court: Okay. So it's your testimony under oath that you asked the deputy to make a second call.

Mr. Jacobson: Right.

The Court: Okay. But you didn't say why.

Mr. Jacobson: I didn't say why.

The Court: Okay.

Mr. Jacobson: I didn't mention anything about doing a second breath test.

Transcript, Motion to Dismiss, p. 18, ll. 21 to p. 20, ll. 8 (April 13, 2005).

At the conclusion of the hearing, the trial court said: "His [Mr. Jacobson's] testimony is later that as he was headed back in he asked the jail to make an additional call. They told him that he was headed back to the holding cell because of his attitude." The court, however, did not decide whether Mr. Jacobson actually made such a request for an additional call.

During the interchange with Mr. Jacobson the court seems somewhat skeptical of Mr. Jacobson's most recent testimony, which appears to be impeached by earlier statements. If Mr. Jacobson did request an additional call, and the trial court finds that the decision to deny the call was not based upon valid legal grounds or there was unreasonable interference with or a denial of access to the phone caused by the jail, the holding of *Carr* will apply. Thus, the trial court would then have to determine whether the state's tests should be suppressed or the case dismissed. In this case, the trial court concluded that Mr. Jacobson did not tell the jail staff that he wanted to call an attorney or obtain an independent test. As outlined by the cited case law, the intoning of the magic words "attorney" or "independent test" are not necessarily dispositive, as freedom and the ability to communicate with someone with knowledge will likely result in decisions to obtain such a test and secure other exculpatory evidence. See *Shelton*, 129 Idaho at 880, 934 P.2d at 946; *Carr*, 128 Idaho at 184, 911 P.2d at 777.

**b. The Jail's Policy May Unlawfully Preclude the Exercise of Due Process Rights**

In light of the jail's policy to allow "numerous" phone calls without limit, preventing a defendant from exercising constitutional and statutory rights because he is argumentative or difficult verbally requires scrutiny, particularly when the standard being applied by jail personnel is extremely subjective. Without an independent recollection, it is difficult to determine what the nature of Mr. Jacobson's "attitude" was. Nonetheless, even if Mr. Jacobson was somewhat obnoxious, a person who displays such conduct should not automatically be denied his or her rights. The decision to prevent Mr. Jacobson from exercising his rights under the totality of the



circumstances shown here is troubling. If people are to be denied their rights when they are characterized as argumentative, it is a short step to use such a subjective conclusion as a pretext to deny individuals their rights because of ethnic, racial, or religious prejudices.

At the same time, consideration is to be given to the fact that the jail staff must have the ability to control people who are belligerent and under the influence of alcohol or drugs when they are arrested. This ability to control, however, must also be tempered with the realities faced at the time. If an arrested individual poses a security risk or is a danger to jail personnel, confinement in a holding cell until there is an "attitude adjustment" may be the best alternative. Under the limited facts presented in this case, neither the state nor the defense demonstrated that other alternatives existed. Were all four jailers on duty that night precluded from assisting? Or was the decision to place Mr. Jacobson in a holding cell simply a matter of convenience, that is, an alternative the jailer believed would avoid an unpleasant situation? At this point, based on the record as it exists, it is impossible to determine. Thus, there remains a question as to whether the jail staff interfered with or affirmatively denied Mr. Jacobson's access to a phone, a question that should be addressed on remand.

**c. The First Come – First Served Jail Policy**

If the jailers were justified in placing Mr. Jacobson in a holding cell, the first come – first served policy at the jail also comes into question. Because a DUI case involves exigencies that arise due to the metabolic conversion of alcohol, it may have been a violation of Mr. Jacobson's due process rights to first book individuals who were transferred to the Bonner County Jail who had little or no chance of bonding out unless there was a court appearance. Simply stated,

balancing the rights of others with the rights of DUI detainees, whose evidence evaporates with each passing minute, may require a finding of a denial of due process depending on the totality of the circumstances. At this time the record is bereft of information concerning the other prisoners who were being booked. If there were no exigencies connected with the other prisoner's bookings, in the same way that a triage decision is made at the hospital emergency room, due process concerns may have required booking Mr. Jacobson first or second, and not last.

The implication of due process violations occurs because all bookings at the jail do not involve the same type of exigencies presented in DUI cases. For example, an individual being transferred by the Department of Corrections to the Bonner County Jail for a retained jurisdiction review hearing will not be released until his or her hearing is held. Although it may be inconvenient for the convicted felon to wait longer for the person accused of driving under the influence to be booked first, a balancing of the equities mandates such a result. Other transfers may involve bench warrants with high bonds from other jurisdictions which result in little or no chance of the defendant making bond absent a hearing before a judge. If those facts or other similar situations existed at the time of Mr. Jacobson's booking, it may have been incumbent on the jail staff to move Mr. Jacobson to the front of the line when consideration is given to all the circumstances then existing.

This court remands this case to the trial court for further findings of fact regarding whether Mr. Jacobson asked for another phone call after he phoned the bail bondsman, and a determination as to whether the jail staff's conclusion to incarcerate Mr. Jacobson in a holding

cell was lawful should the court conclude such an additional phone call request was made. Further, this matter is remanded for additional testimony regarding whether the exigencies faced by Mr. Jacobson under the totality of the circumstances outweighed the exigencies faced by other prisoners who were ahead of him for booking pursuant to the jail's first come – first served policy.

### **C. Motion to Dismiss**

Mr. Jacobson seeks to dismiss his underlying charge of *driving under the influence* in this case on the grounds that there was unnecessary delay in processing his appeal. The Appellant states that he filed his Notice of Appeal July 18, 2005 and paid the estimated transcript costs on July 27, 2005. A Notice of Lodging of Transcript was filed January 11, 2007. He argues that the fact that it took sixteen months for the transcript to be lodged is sufficient in itself to show prejudice and should be grounds for dismissal.

Pursuant to Idaho Criminal Rule 48(a)(2), the court, on notice to all parties, may dismiss a criminal action upon its own motion or upon motion of any party if the court concludes that such dismissal will serve the ends of justice and the effective administration of the court's business. A defendant, however, needs to show definite proof of prejudice to support the motion to dismiss. *State v. Dixon*, 140 Idaho 301, 92 P.3d 551 (Ct. App. 2004); *State v. Kruse*, 100 Idaho 877, 606 P.2d 981 (1980). If granted, this rule requires a trial court to explain its reasoning in the order of dismissal.

At this time the court finds that the issues presented in the motion to suppress need to be addressed and determined before a complete examination of prejudice to the Defendant can be

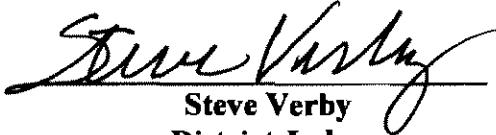
made pursuant to the Idaho Criminal Rule above. If the motion to suppress is granted, the state may choose to dismiss the complaint. If suppression is not granted, the Defendant may or may not be able to show prejudice as the sentence was suspended during the time of appeal. Depending on the trial court's findings of fact and legal conclusions, it may or may not choose to grant the motion to dismiss because of the extended delay. The trial court, having heard the testimony of the witnesses, and having the ability to hear additional testimony on the issues to be determined, will be in a far better position to decide the motion to dismiss.

#### IV. CONCLUSION

Based on the foregoing reasons, this matter is REMANDED.

IT IS SO ORDERED.

DATED this 9<sup>th</sup> day of August, 2007.

  
Steve Verby  
District Judge

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, faxed, or delivered by interoffice mail, this 9<sup>th</sup> day of August, 2007, to:

Fred Palmer  
Attorney at Law  
106 W. Superior Street  
Sandpoint, ID 83864

Lori Meulenberg  
City of Sandpoint Prosecuting Attorney  
Courthouse Mail  
Sandpoint, ID 83864

District Judges

  
District Court Secretary/Deputy Clerk

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2007 SEP 26 P 2:55

MARK SCOTT  
DISTRICT COURT

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

DAN STANLEY JACOBSON,

Defendant.

Case No. CR-04-9931

MOTION TO VACATE AND CONTINUE  
REMAND HEARING

COMES NOW Defendant, through his attorney, Fred R. Palmer, and moves the Court to vacate and continue the October 10, 2007 Remand Hearing and to regularly reset the same to October 15, 2007 at 11:00 a.m.. The basis for this motion is that counsel for Defendant will be out of the state on October 10, 2007.

DATED this 24 day of September, 2007.

*Fred Palmer*

Fred R. Palmer, Attorney for Defendant

So Stipulated:

*Lori T. Meulenberg*  
Lori Meulenberg, Sandpoint City Attorney

9-26-07  
Date

MOTION TO VACATE AND CONTINUE REMAND HEARING

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ISB #1716

STATE OF IDAHO  
County of Bonner  
FILED  
AT 7:40 O'clock 9/28/07 M  
CLERK, [Signature] DISTRICT COURT  
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO, )

Plaintiff, )

vs. )

DAN STANLEY JACOBSON, )

Defendant. )

Case No. CR-~~04~~-9931

ORDER VACATING AND CONTINUING  
REMAND HEARING

Based upon the stipulation of the parties and there being good cause, now therefore

IT IS HEREBY ORDERED that the October 10, 2007 Remand Hearing in the  
above matter are vacated and continued and is regularly reset to October 15, 2007 at 11:00  
a.m.

DATED this 28 day of Sept, 2007

[Signature]  
Debra A. Heise, Magistrate

I hereby certify that a true and correct copy of the foregoing was hand  
delivered,    faxed, X mailed, postage prepaid, this 1 day of Oct, 2007 to:

Lori Meulenberg  
Deputy Bonner Co. Prosecutor  
Courthouse Mail

Fred R. Palmer - Fax #263-8983

[Signature]  
ORDER VACATING AND CONTINUING PRETRIAL CONFERENCE AND JURY TRIAL

FRED R. PALMER  
ATTORNEY AT LAW  
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(208) 263-8529  
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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

COURT MINUTES

JUDGE: HEISE  
DIVISION: MAGISTRATE  
CLERK: PEINE

CASE NO. CR-04-9931  
DATE: 10-15-07  
CD: #07-44

TIME: 11:00 AM

STATE OF IDAHO

Vs DAN JACOBSON

Plaintiff / Petitioner

Defendant / Respondent

Atty: L. MEULENBERG

Atty: F. PALMER

SUBJECT OF PROCEEDINGS

REMAND HEARING

INDEX	SPEAKER	PHASE OF CASE
11:10	J	<b>Calls Case</b>
		<b>Present:</b> L. MEULENBERG, DEF W/F. PALMER
	J	STATE'S OFFICER DEPUTY INMAN ALSO PRESENT. MET OFF THE RECORD. PARTIES HAVE STIPULATED TO CONTINUE THIS HEARING TO 10-22-07 AT 2:00 P.M. IN THE MEANTIME, DISCOVERY TO BE EXCHANGED. THIS IS ONLY NOTICE PARTIES/ATTORNEYS WILL GET.
11:12		END



**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

**COURT MINUTES**

**JUDGE: DEBRA A. HEISE**  
**DIVISION: MAGISTRATE**  
**CLERK: M. SECK**

**CASE NO. CR-2004-9931**  
**DATE: OCT 22, 2007** **TIME: 2:00 PM**  
**CD # 07- 49**

**STATE OF IDAHO**

**vs DAN STANLEY JACOBSON**

Plaintiff / Petitioner

Defendant / Respondent

Atty: LORI MEULENBERG

Atty: FRED PALMER

**SUBJECT OF PROCEEDINGS  
CHARGE**

**HEARING ON REMAND**

INDEX	SPEAKER	PHASE OF CASE
2:31	J	<b>Calls Case</b>
		<b>PRESENT: LORI MEULENBERG FRED PALMER WITH DEFENDANT</b>
	J	JUST READ THE DECISION AGAIN. SOMEONE HAD THE BURDEN OF PROOF AGAIN. REMANDED AGAIN FOR ME TO START ALL OVER AGAIN.
	J	IF THERE IS AN ALLEGED DUE PROCESS ISSUE AND THE EVIDENCE WASN'T THERE, THEN BURDEN WASN'T THERE. COURT'S CAN'T TAKE OVER.
	J	THE WAY I READ THE DECISION, NOT SURE HOW EVERYONE ELSE READS IT, MAYBE I I SHOULD JUST DECIDE WHAT IS ALREADY THERE.
	J	READS FROM DECISION.
	J	DUE PROCESS IMPLICATIONS ON FIRST IN AND FIRST OUT AT THE JAIL. THEY HAVE TO RE-PRIORITIZE HOW THEY BOOK PEOPLE.
	J	WHAT I NEED TO KNOW FROM YOU IS DO I START ALL OVER. I CAN GO BACK OVER AND LISTEN TO THE TAPES AND BASE A DECISION FROM THAT, OR DO WE START FROM SCRATCH
	LM	I DON'T THINK WE DON'T NEED TO START FROM SCRATCH. I FOUND THE DECISION WAS A BIT CONFUSING. THERE MAY NEED TO BE ADDITIONAL INFORMATION YOU MAY NEED.
	J	READ THE ORIGINAL MOTION, TRANSCRIPT AND THEN DECIDE WHO HAD THE BURDEN AND IF THEY WERE MET. I FOUND WAS THAT HE DIDN'T ASK AN INDEPENDENT TEST OR AN INDEPENDENT ATTORNEY. NOW I HAVE TO MAKE A DECISION WHETHER OR NOT HE REQUESTED AN ATTORNEY. WHO HAS THE BURDEN ON THAT AND IF IT WAS SUSTAINED. THEN MOVE ON TO NEXT ISSUE.
	FP	I DON'T THINK WE START ALL OVER. DECISION STATES WHAT APPLICABLE LAW IS AND ASKS YOU TO MAKE AN INTERPRETATION.
2:38	FP	ON TELEPHONE ACCESS - YOU DON'T NEED TO MAKE A REQUEST FOR A INDEPENDENT TEST.
	J	OR IF HE REQUESTED TELEPHONE ACCESS AND IF HE DID, WAS HE PROVIDED SUCH.
	FP	ALSO UNCLEAR - THEN OTHERS TO BE BOOKED AND ALLOWED TO USE THE PHONE PRIOR TO MR. JACOBSON. WERE ANY OTHERS DUI AND NEED FOR EXPEDITED ACCESS.
	J	SEEMS TO ME SOMEONE HAD BURDEN AND IT SHOULD HAVE OR NOT BEEN MET. LIKE I SAID I WOULD PROBABLY GO BACK AND LISTEN TO THE TAPES AND READ WITH THE TRANSCRIPTS.
	J	MS. MEULENBERG, WILL LET YOU DECIDE. ANY ADDITIONAL EVIDENCE YOU WANT TO OFFER. PROBLEM WITH STARTING OVER IS MEMORY. EXPLAINS.

	FP	ONLY PLACE TO EXPAND – PEOPLE THAT WERE BROUGHT IN AND BOOKED. AGREE MEMORIES ARE WEAKENED OVER TIME. DEPUTY INGRAM WAS SPEAKING ON GENERAL POLICIES.
2:42	J	FOR EVERY ISSUE RAISED, SOMEONE HAD THE BURDEN AND EITHER SUSTAINED IT OR DIDN'T. IT WOULD BE IN THE CORRECT.
	LM	HAVING A HARD TIME – THE TESTIMONY WE COULD PRESENT TODAY WOULD BE WHAT THE OTHER PEOPLE WERE THERE FOR. OTHER PEOPLE'S RIGHTS.
	J	STIPULATE TO -
	FP	COULD STIPULATE TO THAT ALL OTHERS WEREN'T DUIS.
	LM	OTHERS HAVE DUE PROCESS ALSO.
	J	READS FROM DECISION. WHO HAS THE BURDEN OF SHOWING THE FINANCIAL SOLVENCY OF THESE DETAINEES.
2:45	J	I SHOULD JUST GO THROUGH EACH OF JUDGE VERBY'S POINTS AND THEN MOVE ON TO NEXT ISSUE. ANY OBJECTION
	FP	BASIS FOR COMMENTS ABOUT BURDEN – YOU DON'T FEEL JUDGE VERBY HAD AUTHORITY FOR ADDITIONAL EVIDENTIARY. EXPLAINS. ADDITIONAL EVIDENCE ON A REMAND – DOES THE APPELLATE COURT HAVE THAT AUTHORITY.
	J	THEY CAN'T EXPAND THE MOTION. AGAIN READS FROM DECISION.
	LM	HE SAYS IT HAS TO BE RE-THOUGHT AGAIN ON THE ACCESS TO PHONE. THAT'S WHY IS UNCLEAR WHAT HE WANTS THE COURT TO DO. READS FROM DECISION.
	FP	RELUCTANT TO STIPULATE TO ANYTHING.
	FP	ON REMAND THAT YOU GO THROUGH OPINION, GO THROUGH DECISION AND RE-SHAPE YOUR DECISION. LAW DOESN'T ALLOW YOU TO RECEIVE ANY ADDITIONAL EVIDENCE. IF THAT'S THE CASE. SO BE IT.
	J	WILL GIVE EACH OF YOU TO TELL ME WHAT YOU WANT.
	LM	PUT ON ADDITIONAL TESTIMONY.
	FP	GIVEN THE OPINION – ADDITIONAL TESTIMONY NOT ADDRESSED WHICH IS WHAT THESE ADDITIONAL PRISONERS WERE BEING BOOKED FOR.
	LM	THE ADDITIONAL TIME FOR MR. JACOBSON. THEY STARTED BOOKING AT 3:49.
	J	WILL PRECLUDE YOU FROM THAT BUT IF YOU WANT TO MAKE AN OFFER OF PROOF WILL ALLOW THAT. BUT AGREE WILL ADDITIONAL TESTIMONY ON PRISONERS AND WHY THEY WERE THERE
	J	SOUNDS LIKE A STIPULATION
	LM	SO WHERE DOES THE BURDEN LIE.
	J	I THINK ON THE EXIGENT CIRCUMSTANCES, THAT WOULD BE ON THE DEFENSE.
	FP	WILL HAVE SOME EXHIBITS MARKED.
	J	DEFENSE EXHIBITS C THROUGH G HAVE BEEN MARKED.
	FP	<b>MOVE FOR ADMISSION DEFENSE EXHIBITS C THROUGH G.</b> EXHIBIT C – JAIL AND COURT DOCUMENTS WITH RE: RACHEL BUJKO EXHIBIT D – LARRY BASSINGER – JAIL AND COURT DOCS EXHIBIT E – THOMAS KETTENERING – JAIL AND COURT DOCS EXHIBIT F – EILEEN WARFORD – BOOKING RECORDS ONLY. EXHIBIT G – CHADWIN KING – JAIL AND COURT DOCS
	LM	NO OBJECTION
	J	<b>DEFENSE EXHIBITS C THROUGH G IS ADMITTED.</b>
	FP	NOTHING FURTHER ON THOSE RECORDS.
	J	CAN WE STIPULATE THAT C THROUGH G ARE THE OTHER INMATES ARRESTED
	FP	YES, AND CROSS REFERENCED TO THE BOOKING SHEET THAT HAS ALREADY BEEN ADMITTED.
	FP	NOTHING FURTHER.
3:01	LM	I GUESS I WOULD LIKE CLARIFICATION FROM COURT – IF THOSE ARE PART

		OF THE RECORD AS TO WHAT OCCURRED THAT EVENING – THE ISSUE OF MR. JACOBSON IS NOT RELEVANT.
	J	YOU LOST ME.
	LM	LOOKING AT A TIME FRAME THAT EVENING. WHO WAS IN AND OUT.
	J	WHILE HE WAS IN A HOLDING CELL AND OTHERS BEING BOOKED. I THINK THAT'S WHAT I'M SUPPOSED TO BE LOOKING OUT.
	LM	AND IF HIS PROCESS WAS GOING ON OR JUST SITTING IN A CELL.
	J	IF YOU WOULD LIKE TO OFFER TESTIMONY
	LM	I WOULD. CALL DEPUTY INMAN.
	SWORN	DEPUTY INMAN
	DI	EMPLOYED WITH BCSO JAIL. TESTIFIED AT APRIL, 2005 SUPPRESSION HEARING. ON DUTY THE EVENING OF DEFENDANT'S ARREST. WAS ASKED TO PULL RECORDS FROM THAT SAME EVENING AND TIME FRAME. RECALL MR. JACOBSON WAS TAKEN TO A HOLDING CELL DUE TO ATTITUDE. HE WAS BOOKED AGAIN AT 5:02. WHILE IN THE CELL, THEY HAD STARTED HIS BOOKING PROCESS WHILE HE WAS IN THE CELL. YOU CAN FILL OUT 4 OF THE 6 SCREENS WITHOUT PERSON BEING THERE. THE PERSON DOESN'T HAVE TO BE IN BOOKING TO PROCEED. IT'S FASTER, IT'S A PROCEDURE THAT HAS TO BE DONE BEFORE HE CAN BOND OUT. WIXSON STARTED BOOKING PROCESS. DESCRIBES THE DIFFERENT SCREENS. NUMEROUS ONES WE HAVE TO FILL OUT.
	FP	BEFORE WE GO ANY FATHER IN LIEU OF AN OBJECTION.
	DI	I WOULD HAVE TO LOOK AT THE BOOKING SHEETS TO SEE IF I WAS THE ONE INPUTTING THE INFORMATION ON THE SCREENS REGARDING THE OTHER INDIVIDUALS.
	J	I DON'T THINK SHE HAS BEEN ASKED TIME. SHE HAS BEEN ASKED HOW MANY SCREENS AND WHAT IS INVOLVED.
	LM	I HAD ASKED HER SPECIFICALLY ABOUT MR. JACOBSON AT STARTING AT 3:49.
	J	CORRECT, BUT I'M GOING TO LET HER FINISH HER ANSWER AS TO HOW MANY SCREENS. IF IT GETS MORE INVOLVED WITH MR. JACOBSON I'LL LET YOU FINISH YOUR VOIR DIRE
	DI	FINISHES DESCRIBING SCREENS.
	FP	NO OBJECTION YET.
	LM	CONTINUES DIRECT
3:11	DI	HAVE HAD TO FILL OUT SIMILAR SCREENS. AT LEAST WEEKLY. I DO IT MYSELF. OTHERS DO SAME JOB. IT SHOWS MS. WIXSON ON THE SHEET, AND THAT PERSON CONTINUE THROUGH THE ENTIRE PROCESS. IT WOULD NORMALLY TAKE ABOUT 10 MINUTES TO DO THOSE 4 SCREENS. AROUND 5 PM THE OTHER SCREENS WOULD HAVE BEEN FILLED OUT.
	FP	WANT TO RENEW MY VOIR DIRE.
	J	CLARIFIES OBJECTION – WILL SUSTAIN.
	LM	NOTHING FURTHER.
	FP	NO QUESTIONS.
3:14	J	ANY ADDITIONAL EVIDENCE MS. MEULENBERG.
	LM	NO.
	FP	NOTHING FURTHER.
	J	ARGUMENT. – WHOEVER WANTS TO GO FIRST.
	FP	OPENING IT UP TO ENTIRE.
	J	YES.
3:15	FP	ARGUMENT
3:22	LM	ARGUMENT
3:31	FP	REBUTTAL
	J	LIKE I SAID, I WILL LISTEN TO THE TAPE, LISTEN ALONG WITH THE TRANSCRIPT AND READ THE DECISION. IT WILL BE AT LEAST A MONTH.
	FP	I THINK HE REMANDED – CONTINUE TO DENY SUPPRESSION ISSUES, THEN ANOTHER SET OF ISSUES.

	J	DID HE SAY THAT THOUGH. READS FROM DECISION ON MOTION TO DISMISS. NEED TO BE ADDRESSED AND DETERMINED. I THINK THE BURDEN IS ON DEFENDANT TO SHOW PREJUDICE.
	FP	I AGREE.
	J	OKAY. DON'T HAVE TO CROSS THAT BRIDGE.
3:37		END

SEAL OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2007 NOV 19 P 3:16

CLERK OF DISTRICT COURT

*[Signature]*  
CLERK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION**

<b>STATE OF IDAHO,</b>	)	<b>CASE NO. CR-04-9931</b>
	)	
<b>Plaintiff,</b>	)	<b>ORDER ON REMAND</b>
	)	<b>and ORDER DENYING</b>
<b>-vs-</b>	)	<b>MOTIONS TO SUPPRESS</b>
	)	<b>and TO DISMISS</b>
<b>DAN S. JACOBSON,</b>	)	<b>and</b>
	)	<b>ORDER REINSTATING</b>
<b>Defendant.</b>	)	<b>JUDGMENT and VACATING</b>
	)	<b>STAY</b>

The hearing on remand was held October 22, 2007. Defendant Dan S. Jacobson was present and represented by counsel Fred Palmer. The State was represented by Sandpoint City Prosecutor Lori Meulenberg. Defendant was charged with Driving under the Influence on December 29, 2004. This Court denied Defendant's Motion to Suppress and/or Dismiss, in which he asserted that his due process rights were violated when he was denied meaningful access to a telephone to arrange bail after his arrest thereby interfering with his ability to gather exculpatory evidence. On appeal, the District Court remanded this matter for further findings by Order dated August 9, 2007. The District Court stated at the outset of its decision:

This case involves the concept of due process as it relates to the rights of an individual charged with driving under the influence of intoxicants.

**ORDER ON REMAND and ORDER  
DENYING MOTIONS TO SUPPRESS  
and TO DISMISS and ORDER REINSTATING  
JUDGMENT and VACATING STAY**

Because factual determinations that have yet to be made may change the trial court's analysis, this matter is remanded for further findings concerning: (1) whether Mr. Jacobson requested an additional phone call after his initial call to a bail bondsman; and (2) whether Mr. Jacobson, due to the exigencies attendant to the metabolism of alcohol, should have been booked earlier, and thus avoided a nearly four hour delay after his arrest and before his release.

The facts of this case are outlined in detail in the Order for Remand, and within that framework, after review of both the audiotapes of the hearings on the Motions to Suppress and Dismiss as well as the transcripts of those hearings, this Court determines that Mr. Jacobson either asked the sheriff's deputy to make an additional phone call or communicated a desire to make an additional phone call to the sheriff's deputy before he was returned to the holding cell after his first two phone calls. This Court notes that Mr. Jacobson at first testified that he "didn't have an opportunity to say anything" after he connected at least one of the two calls to the bondsman because the deputy told him he had a bad attitude. However, Mr. Jacobson later testified that he did request to use the phone again, although he did not specify why. Deputy Inman testified that she could not recall whether he made such a request. Therefore, in determining the first factual issue on remand, this Court determines by a greater weight of the evidence that Mr. Jacobson requested an additional phone call after having been given an opportunity to make at least two phone calls, one at 2:54 AM and the second at 2:57 AM, including the call he connected to the bail bondsman, and before he was returned to the holding cell. However, as originally found by this Court, and as noted by Judge Verby in his Decision on Appeal, and as confirmed by this Court's review of the record, Mr. Jacobson never communicated to any law enforcement personnel that he wanted to call an attorney or that he wanted to place a call to set up an opportunity to take another test.

ORDER ON REMAND and ORDER 2  
DENYING MOTIONS TO SUPPRESS  
and TO DISMISS and ORDER REINSTATING  
JUDGMENT and VACATING STAY

The District Court then directed this Court to enter findings on whether the jail staff interfered with or affirmatively denied Mr. Jacobson's access to a phone. Judge Verby noted at page 15 of his Order:

At the same time, consideration is to be given to the fact that the jail staff must have the ability to control people who are belligerent and under the influence of alcohol or drugs when they are arrested. This ability to control, however, must also be tempered with the realities faced at the time. If an arrested individual poses a security risk or is a danger to jail personnel, confinement in a holding cell until there is an "attitude adjustment" may be the best alternative. Under the limited facts presented in this case, neither the state nor the defense demonstrated that other alternatives existed. Were all four jailers on duty that night precluded from assisting? Or was the decision to place Mr. Jacobson in a holding cell simply a matter of convenience, that is, an alternative the jailer believed would avoid an unpleasant situation? At this point, based on the record as it exists, it is impossible to determine. Thus, there remains a question as to whether the jail staff interfered with or affirmatively denied Mr. Jacobson's access to a phone, a question that should be addressed on remand.

The District Court did not reveal which party had the burden of proof on this issue, nor did the District Court specify the standard of proof. At the hearing on remand, neither the State nor Defendant offered any argument on the issue of which party had the burden of proof on this issue.

Although this Court could find no case factually on point, this Court concludes after review of other cases where criminal defendants have alleged due process violations that the burden of proof is on the defendant. For example, in *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988), the government failed to preserve "evidentiary material of which no more can be said than it could be subjected to tests, the results of which might have exonerated the defendant." The United States Supreme Court held that no due process violation occurs unless *the defendant demonstrates* that

ORDER ON REMAND and ORDER  
DENYING MOTIONS TO SUPPRESS  
and TO DISMISS and ORDER REINSTATING  
JUDGMENT and VACATING STAY

the government acted in bad faith. Therefore, under **Youngblood**, to demonstrate a due process violation based on the government's failure to preserve evidence, *the defendant must show* (1) that the evidence was potentially useful, and (2) that the government acted in bad faith. 488 U.S. at 58. Similarly, *the defendant bears the burden* of proof on the issue of impermissible suggestiveness where a defendant claims a due process violation by virtue of an unnecessarily suggestive lineup. *See United States v. Clausen*, 328 F.3<sup>rd</sup> 708 (3<sup>rd</sup> Cir. 2003). And where a defendant alleges a due process violation caused by a preindictment delay, *the burden of proof is on the defendant* to show (1) that the act of delay was intentional in order to gain some advantage, and (2) that the intentional act caused defendant actual prejudice. *See United States v. Ladson*, 238 Fed. Appx. 874 (3<sup>rd</sup> Cir. 2007). Finally, at the original hearing in this case, Defendant's attorney "acknowledged" that "it's the defendant's burden in this case." Page 6, Lines 14 & 15 of the Transcript.

Therefore, in this case the Defendant has the burden of establishing that the jail staff affirmatively denied or interfered with his access to the telephone, and this Court determines that the record as it exists fails to support such a finding. The District Court so noted in its decision by stating that "based on the record as it exists, it is impossible to determine."

The jail staff did *postpone* Mr. Jacobson's continued access to the phone during which time, in accordance with the jail policy of first-come, first served, they booked at least four and possibly five other persons who had been arrested and who arrived at the jail before Mr. Jacobson. It is significant that Mr. Jacobson's anger at the bondsman after his second telephone call and before he was placed in the holding cell was objectively



obvious as verified by Mr. Jacobson's testimony at the suppression hearing when asked whether he said anything to the deputy in a "derogatory and angry manner," and he responded that:

I think I might have said that it was ridiculous. I repeated probably after she told me that I had an attitude, you know, because I just—I couldn't believe that they, you know, wanted me to have a cosignor. You know it seemed oxymoron, you know. How do you do that?

See Page 13, Lines 22-25 and Page 14, Lines 1-4 of the Transcript. Jail staff does not act unreasonably when they separate an objectively obvious and self-described angry inmate to allow the anger to dissipate.

The evidence adduced by the State at the hearing on remand was that all inmates must be booked before they are permitted to be released on bail. The evidence adduced by the State at the suppression hearing was that it takes about an hour on average to book an inmate. See page 34, Lines 6 & 7 of the Transcript. Generally, the particular deputy who starts the booking process is the one who completes it. See page 36, Lines 8 – 12 of the Transcript.

Mr. Jacobson was booked as soon as the bookings of the four or five other prisoners were completed, and there is no evidence that staff was available in the jail to attend to Mr. Jacobson while the other prisoners were being booked. The two arresting officers, Officers Fry and Bailey, left the jail at 2:24 AM and were no longer available to assist. The jail staff commenced the booking process for Mr. Jacobson at 3:49 AM, 52 minutes after he was permitted his first two telephone calls and while he was sitting in the holding cell. The evidence at the hearing on remand revealed that he was officially

booked at 5:02 AM. He was allowed a third telephone call at 5:26 AM, at which time he telephoned his wife. He was released at 6:44 AM after posting bail.

This Court finds that Defendant has failed to sustain his burden to prove by a preponderance of the evidence that the jail staff interfered with or affirmatively denied his access to a telephone.

There is similarly little evidence in record on the remaining issue to be addressed on remand, that is, "whether Mr. Jacobson, due to the exigencies attendant to the metabolism of alcohol, should have been booked earlier, and thus avoided a nearly four hour delay after his arrest and before his release." The District Court, again without addressing who has the burden of proof on this issue, also noted the insufficiency of evidence in the existing record because the District Court remanded the matter "for additional testimony regarding whether the exigencies faced by Mr. Jacobson under the totality of circumstances outweighed the exigencies faced by other prisoners who were ahead of him for booking pursuant to the jail's first come-first served policy." The District Court stated that "[a]t this time the record is bereft of information concerning the other prisoners who were being booked. If there were no exigencies connected with the other prisoner's bookings, in the same way a triage decision is made at the hospital emergency room, due process concerns may have required booking Mr. Jacobson first or second, and not last."

This Court determined at the remand hearing that Defendant had the burden of going forward, and Defendant did proceed on this issue. Admitted into evidence as Defendant's Exhibits C, D, E, F, and G are booking records of other defendants who were booked before Mr. Jacobson. Exhibit C shows that Rachel Bujko was arrested at

20:00:00 hours on December 28, 2004 on a Warrant to serve 2 days of unscheduled jail time on a charge of Possession of Drug Paraphernalia. Defendant's Exhibit D shows that Larry Baysinger was arrested at 5:30:00 hours on December 28, 2004 on a Warrant of Attachment with bail set at \$132 either cash or surety. Defendant's Exhibit E shows that Thomas Kettenring was arrested at 1:19:00 hours on December 28, 2004 on an FTA warrant for failing to serve 2 days on the sheriff's labor program. Defendant's Exhibit F shows that Eilene Warford was arrested at 22:30:00 hours on December 28, 2004 on a felony warrant for possession of a controlled substance with bail set at \$10,000. Defendant's Exhibit G shows that Chadwin King was arrested at 00:30:00 hours on December 28, 2004 on 2 Warrants of Attachment (with bail of \$50,000 surety or \$8,120 cash on one warrant of attachment and bail of \$73.50 on the second warrant of attachment) and 2 FTA Warrants (with bail of \$2,000 on each). Although all of these individuals were arrested on December 28, 2005, they were not booked into the Bonner County Jail until the early morning hours of December 29, 2004. Three of the five (Baysinger, Kettenring, and King) were arrested in Kootenai County and transported to Bonner County on December 28, 2004.

By comparison, Mr. Jacobson was arrested at 1:01 AM (1:01:00 hours) on December 29, 2004. His booking commenced at 3:49 AM (03:49:00 hours) on December 29, 2004 and completed at 5:02 AM (05:02:00 hours) that same date. None of the other defendants booked before Mr. Jacobson on December 29<sup>th</sup> were charged with DUI. Three of the five (Baysinger, Warford, and King) were held on bond and could have been released on bail after they were booked.

The determination of whether application of the jail's first come-first served booking policy in this case violated Mr. Jacobson's due process rights requires consideration of the Idaho Court of Appeals holding in *State v. Carr*, 128 Idaho 181, 911 P.2d 774 (Ct.App. 1996), also cited in Judge Verby's decision and included in his analysis. Therein, defendant was also charged with DUI. After submitting to the breath test, Carr asked the arresting officer when she could speak to an attorney. The arresting officer informed her she could make phone calls when "jail personnel were ready to let her make phone calls." After the arresting officer left the jail, Carr "made several requests of other officers to contact an attorney." The officers denied her requests. Carr was permitted access to the telephone five hours after her arrest. The Court of Appeals concluded that Carr's arguments regarding denial of her right to gather exculpatory evidence and her right to a fair trial were "essentially due process claims, although couched in terms of the interference with her ability to contact counsel." The Court of Appeals further concluded that Carr was held incommunicado for an unreasonable time following administration of the State's BAC test and that the State denied her right to due process under the Fourteenth Amendment to the U.S. Constitution. In doing, so the Appeals Court, citing *Mathews v. Ethridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), applied the following test:

The test for determining whether state action violates procedural due process requires a court to consider three distinct factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the existing procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Applying this test to the instant case, Mr. Jacobson's private interest affected is the same as that in **Carr**, that is, procuring evidence that would challenge the results of the States's BAC test. However, the facts underlying analysis of the second and third factors are distinguishable. Initially, it is significant that in this case, unlike **Carr**, Mr. Jacobson was given an opportunity to make a telephone call prior to being booked. Although the jail books inmates on a first-come, first-served basis, the jail does not allocate telephone calls accordingly. Telephone calls are obviously allowed prior to an inmate being booked. And if an inmate can secure bail, and the bail shows up, the inmate is moved to the head of the line. The evidence at the original suppression hearing was that the inmates are booked on a first come, first served basis "unless a bond shows up, then we'll pull that person out and let that person, if the bond is there." See testimony of Deputy Inman at Page 34, Lines 17-21 of Transcript. Prior to being booked, Mr. Jacobson was given two opportunities to make a telephone call, and he was able to connect with a bail bondsman in at least one of them. The jail had no control over Mr. Jacobson's inability to meet the demands of the bondsman. When Mr. Jacobson became demonstrably angry, by his own admission, the jail deputy used her discretion to place Mr. Jacobson into a holding cell until he calmed down. This Court already determined that there was no intentional or affirmative denial by jail staff of Mr. Jacobson's right to make a telephone call. The jail then continued with its existing procedure of booking inmates who had been arrested prior to Mr. Jacobson, all of whom who had been arrested well before Mr. Jacobson and at least one of whom had been arrested over 24 hours before Mr. Jacobson. The resulting delay in the commencement of the booking process for Mr. Jacobson was 52 minutes from the time of his second telephone call. This Court determines that the existing

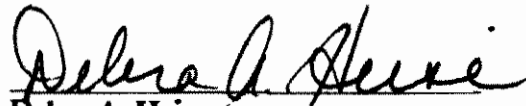
procedures did not deprive Mr. Jacobson in particular, or jail inmates in general, of due process rights. Accordingly, Defendant's Motion to Suppress is denied.

Finally, the District Court additionally remanded the matter for consideration of whether this case should be dismissed on grounds that there was unnecessary delay in processing his appeal. The District Court, citing *State v. Dixon*, 140 Idaho 301, 92 P.3d 551 (Ct.App. 2004) and *State v. Krause*, 100 Idaho 877, 606 P.2d 981 (1980), noted that Defendant "needs to show definite proof of prejudice" on this issue. Defendant has failed to demonstrate any prejudice. It is noted that execution of the provisions of the Withheld Judgment were stayed on appeal. Accordingly, Defendant's Motion to Dismiss is also denied.

NOW, THEREFORE, IT IS SO ORDERED.

IT IS FURTHER ORDERED that the provisions of the Withheld Judgment imposed July 18, 2005 are re-instated effective this date. It is further ordered that the Stay of Judgment previously imposed is hereby vacated.

DATED: November 19, 2007.

  
Debra A. Heise

I hereby certify that a true and correct copy of the foregoing ORDER was mailed this  
19 day of November, 2007, by U.S. Mail, as follows:

Ms. Lori Meulenberg  
Sandpoint City Prosecutor  
Courthouse Mailbox

Mr. Fred Palmer  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864

Cap  
Secretary/Deputy Clerk

ORDER ON REMAND and ORDER      11  
DENYING MOTIONS TO SUPPRESS  
and TO DISMISS and ORDER REINSTATING  
JUDGMENT and VACATING STAY

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

2007 DEC 5 A 9:53

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-04-9931
	)	
vs.	)	MOTION TO VACATE ORDER DENYING
	)	MOTION TO DISMISS, ORDER
DAN STANLEY JACOBSON,	)	REINSTATING JUDGMENT AND ORDER
	)	VACATING STAY AND NOTICE OF
Defendant.	)	MOTION

COMES NOW Defendant, through his attorney, Fred R. Palmer, and moves the Court to vacate its November 19, 2007 above referenced orders. The basis of this motion is that, because a showing of prejudice due to unnecessary appellate delays would be directly affected by the Court's ruling on suppression at the time of remand hearing on October 22, 2007, it was agreed not to proceed with a remand hearing on dismissal. Pursuant to Rule 34, ICR, it is requested that the Court, having denied suppression, allow Defendant to come forth to present additional evidence and testimony bearing upon the issue of prejudicial delay.

Evidence and oral argument will be presented at time of hearing.

TO: Lori Meulenberg, Prosecutor, City of Sandpoint

YOU ARE HEREBY NOTIFIED that the above motion has been set for hearing on the 21<sup>st</sup> day of December, 2007, at the hour of 2:00 o'clock p.m., or as soon thereafter as counsel may be heard, before the Honorable Debra Heise, Magistrate, in the courtroom of the

MOTION TO VACATE ORDER DENYING MOTION TO DISMISS, ORDER  
REINSTATING JUDGMENT AND ORDER VACATING STAY AND NOTICE OF MOTION

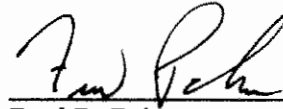
FRED R. PALMER  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983



above entitled court, Bonner County Courthouse, Sandpoint, Idaho.

DATED this 5 day of December, 2007.



Fred R. Palmer, Attorney for Defendant

I hereby certify that a true and correct copy of the foregoing was ☒ hand delivered,  
☐ faxed, ☐ mailed, postage prepaid, this 5 day of Dec., 2007 to:

Lori Meulenberg, Prosecutor  
City of Sandpoint  
Courthouse Mail  
Bonner County Courthouse



MOTION TO VACATE ORDER DENYING MOTION TO DISMISS, ORDER  
REINSTATING JUDGMENT AND ORDER VACATING STAY AND NOTICE OF MOTION

**FRED R. PALMER**  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

2001 DEC 12 A 11: 27

CMB  
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO, )  
)  
Plaintiff-Respondent, ) Case No. CR-2004-0009931  
)  
vs. ) NOTICE OF APPEAL  
)  
DAN S. JACOBSON, )  
)  
Defendant-Appellant. )

TO: Lori Meulenberg, Prosecutor, City of Sandpoint, and to the Clerk of the above-entitled Court:

1. Title of the action or proceedings:

State v. Dan S. Jacobson

2. Title of the court from which appeal is taken:

Magistrate Division, First Judicial District of the State of Idaho, in and for  
County of Bonner

3. The number assigned to the action or proceedings by the trial court:

CR-2004-0009931

4. Title of the court to which the appeal is taken:

District Court of the First Judicial District of the State of Idaho, in and for  
the County of Bonner

5. Date and heading of the judgment or decision from which the appeal is  
taken:

NOTICE OF APPEAL, Page 1

Hearing on Motion to Suppress held on October 22, 2007 and subsequent Order Denying Suppression and Order Denying Dismissal and Order Removing Stay entered by the Honorable Debra Heise, Magistrate, dated November 19, 2007.

6. Statement as to whether the appeal is taken upon matters of law, or upon matters of fact, or both:

Both.

7. Statement as to whether the testimony and proceedings of the original trial or hearing were recorded or reported, together with an identification of the method of recording or reporting and the name of the party or person in whose possession such recording or reporting is located.

Tape recording in the possession of the Bonner County Clerk.

8. State the issues on appeal which the appellant then intends to assert in the appeal; provided, such statement may be filed separately within fourteen (14) days after the filing of the notice of appeal and any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal thereafter discovered by the appellant.

Issues are as follows:

- a. If Defendant was denied due process of law.
  - b. If substantial evidence exists supporting the Court's ruling.
  - c. If Court abused its discretion in denying motions.
9. I hereby certify that this Notice of Appeal has been served upon Lori Meulenberg, Prosecutor, City of Sandpoint, by depositing a true and correct copy of in her mailbox at the Bonner County Courthouse, Sandpoint, Idaho.

DATED this 12 day of December, 2007.



Fred R. Palmer, Attorney for  
Defendant-Appellant

NOTICE OF APPEAL, Page 2

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

**COURT MINUTES**

**JUDGE: DEBRA A. HEISE**  
**DIVISION: MAGISTRATE**  
**CLERK: M. SECK**

**CASE NO. CR-2004-9931**  
**DATE: DEC 21, 2007**      **TIME: 2:00 PM**  
**CD # 07-77**

**STATE OF IDAHO**

**vs DAN STANLEY JACOBSON**

Plaintiff / Petitioner

Defendant / Respondent

Atty: SANDPOINT CITY

Atty: FRED PALMER

**SUBJECT OF PROCEEDINGS**

**MOTION TO VACATE ORDER DENYING MOTION TO DISMISS  
ORDER REINSTATING JUDGMENT AND ORDER VACATING STAY**

**CHARGE**

INDEX	SPEAKER	PHASE OF CASE
2:56	J	<b>Calls Case</b>
		<b>PRESENT: LORI MEULENBERG; FRED PALMER</b>
	J	<b>WHO NOTICED IT UP THEN</b>
	FP	<b>I DID</b>
	J	<b>I DON'T HAVE ANYTHING FILED BY YOU IN THE FILE.</b>
	J	<b>I WOULD LIKE TO MAKE A COPY OF THIS AND SHOW THIS TO MARIE.</b>
	J	<b>GO AHEAD MR. PALMER.</b>
	FP	<b>SET ASIDE THAT PORTION OF YOUR RULING ON THE MOTION TO DISMISS. REASON IS, LISTENED TO MINUTES, SET FORTH IN MOTION. EXPLAINS.</b>
	FP	<b>WE HAVE QUEUED UP THE ACTUAL AUDIO PORTION OF THE HEARING</b>
	J	<b>FAIR ENOUGH</b>
	LM	<b>I DO NOT RECALL THAT.</b>
	J	<b>I HAVE NOT LISTENED TO THE TAPE.</b>
	LM	<b>I DON'T IMAGINE MR. PALMER WOULD SAY SOMETHING TO THE COURT THAT WASN'T SAID.</b>
	J	<b>I AGREE. WILL VACATE ORDER DENYING THE MOTION TO DISMISS; MR. PALMER WILL PREPARE THAT ORDER. HE HAS TO NOTICE THE NOTICE TO DISMISS</b>
	LM	<b>ONLY ON THE ISSUE OF PREJUDICE OF DELAY REMAINS.</b>
	FP	<b>SAME REASON - ASK COURT TO VACATE ORDER STAYING.</b>
	J	<b>CORRECT. REINSTATE THE ORDER</b>
	LM	<b>OBJECTION. THIS HAS BEEN GOING ON FOR 4 YEARS.</b>
	J	<b>FAIR THAT THE STAY BE REINSTATED. OKAY.</b>
	J	<b>MR. PALMER, PLEASE PREPARE BOTH THOSE ORDERS.</b>
301		<b>END</b>

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
County of Bonner  
FILED  
AT 9:30 12-27-07  
CLERK, District Court  
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO, )  
)  
Plaintiff, ) Case No. CR-04-9931  
) **AMENDED**  
vs. ) ORDER VACATING  
)  
DAN STANLEY JACOBSON, )  
)  
Defendant. )

The Honorable Debra Heise, Magistrate, pursuant to stipulation of counsel and  
being otherwise advised, now therefore

IT IS HEREBY ORDERED that the following orders entered November 19, 2007  
are vacated: *to allow Defendant an opportunity to present evidence and argument.*

1. Order Denying Motion to Dismiss;
2. Order Reinstating Judgment;
3. Order Vacating Stay.

*The Order Denying Motion to Suppress is not vacated.*

IT IS FURTHER ORDERED that Defendant will regularly note up that evidentiary  
*the Clerk's Office shall send notice of hearing.*  
remand hearing on Defendant's Motion to Dismiss. **DAN**

DATED this 27 day of December, 2007.

*Debra Heise*  
Debra Heise, Magistrate

ORDER VACATING

I hereby certify that a true and correct copy of the foregoing was \_\_\_ hand delivered, \_\_\_ faxed, \_\_\_ mailed, postage prepaid, this 27 day of Dec, 2007 to:

Lori Meulenberg, Prosecutor  
City of Sandpoint  
Courthouse Mail  
Bonner County Courthouse

*fax*

Fred R. Palmer - Fax #263-8983  
Attorney for Defendant

*Cep*

ORDER VACATING

**FRED R. PALMER**  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529

— / / / —

FROM :

FAX NO. :2082551368

Jan. 07 2008 12:14PM P2

OFFICE OF THE CITY ATTORNEY  
William Herrington (ISBN 1844)  
Lori Meulenberg (ISBN 4313)  
City of Sandpoint  
1123 Lake Street  
Sandpoint, Idaho 83864  
(208) 263-0534  
FAX (208) 255-1368

S. J. AND  
COL. J. J. CHAER  
FIRST JUDICIAL DISTRICT

2008 JAN -7 A 11:21

M. J. J. J.  
CLERK DISTRICT COURT

*Cap*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-04-0009931
	)	Citation No.
-vs-	)	
	)	STIPULATION
Dan Jacobson	)	
	)	
<u>Defendant.</u>	)	

COMES NOW, City of Sandpoint, together with Fred Palmer, Legal counsel for the above-named Defendant and stipulate and agree in their Motion to the Court to vacate the motion setting of January 7, 2008, and to reset the same on a date from January 14, 2008 to January 24, 2008 upon the availability of Valerie Larson.

THE BASIS for the stipulation is that State's witness, Valerie Larson is unavailable on this date.

DATED this 7<sup>th</sup> day of Jan, 2008.

*Lori T. Meulenberg*  
Lori Meulenberg  
City Prosecutor

Stipulated by phone  
Fred Palmer  
Attorney for Defendant

OFFICE OF THE CITY ATTORNEY  
 William Herrington (ISBN 1844)  
 Lori Meulenberg (ISBN 4313)  
 City of Sandpoint  
 1123 Lake Street  
 Sandpoint, Idaho 83864  
 (208) 263-0534  
 FAX (208) 255-1368

CLERK OF DISTRICT COURT  
 FIRST JUDICIAL DISTRICT

2008 JAN -7 A 11:41

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
 MAGISTRATE DIVISION

STATE OF IDAHO,  
 Ex Rel City of Sandpoint

Plaintiff,

-vs-

Dan Jacobson,

Defendant.

Case No. CR-04-0009931

Citation No.

ORDER

BASED UPON THE foregoing Motion and Good Cause there  
 Appearing,

IT IS HEREBY Ordered that the trial set in Bonner  
 County Case No. CR-04-0009931 be vacated and reset for a  
 time between the dates of January 14, 2008 and January 25,  
 2008 upon Valerie Larson's availability.

DATED this 7 day of January, 2008.

Debra A. Heise  
 MAGISTRATE OF THE DISTRICT COURT



**CERTIFICATE OF MAILING**

I do hereby certify that a true and correct copy of the foregoing instrument was hand delivered/mailed, postage prepaid this 7 day of January, 2008 and was addressed to:

Lori Meulenberg  
Sandpoint City Prosecutor  
Courthouse Mail  
Sandpoint, Idaho 83864

Fred Palmer  
Attorney at Law  
106 W. Superior  
Sandpoint, ID 83864

Cap  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

COURT MINUTES

JUDGE: HEISE  
DIVISION: MAGISTRATE  
CLERK: PEINE

CASE NO. CR-04-9931  
DATE: 1-14-08  
CD: #08-03

TIME: 2:00 PM

STATE OF IDAHO

Vs DAN JACOBSON

Plaintiff / Petitioner

Defendant / Respondent

Atty: L. MEULENBERG

Atty: F. PALMER

SUBJECT OF PROCEEDINGS

MOTION TO DISMISS

INDEX	SPEAKER	PHASE OF CASE
2:07	J	<b>Calls Case</b>
		<b>Present:</b> L. MEULENBERG, DEF W/F. PALMER
	J	REMINDED ATTORNEYS THE ONLY REMAINING ISSUE IS MOTION TO DISMISS FOR DELAY
	LM-FP	AGREE
	J	DEFENDANT'S BURDEN
	CLERK	SWORE IN DEF.
2:09	DEF	TESTIMONY
	FP	ASK COURT TO TAKE JUDICIAL NOTICE OF CONDITIONAL PLEA, APPEAL, & STAY.
	J	SO NOTE
2:10	DEF	TESTIFIED WHAT HIS UNDERSTANDING WAS BY ENTERING THE CONDITIONAL PLEA AND APPEAL. HE ATTEMPTED TO ACQUIRE AN UMBRELLA INSURANCE POLICY WHICH WAS DENIED BECAUSE RECORDS SHOWED HE HAD A DUI.
	J	BESIDES BEING HEARSAY, COURT THOUGHT THE REASON CLAIMING DELAY WAS SOMETHING ELSE.
	FP	WILL BE GETTING TO THAT.
	LM	OBJECTION - LEADING AND IRRELEVANT
2:13	J	DEF'S UNDERSTANDING OF CONSEQUENCE IS NOT RELEVANT. WHAT IS MR. PALMER'S POINT HE IS TRYING TO MAKE?
	FP	PRESENTED COPY OF ISTAR'S PRINTOUT.
	J	DOESN'T UNDERSTAND?
	FP	QUESTION IF THE PERIOD OF PROBATION HAS RUN OR IF IT IS STAYED UNTIL DECISION ON APPEAL?
2:15	J	MR. PALMER PREPARED THE STAY ORDER AND COURT SIGNED IT. IT SPEAKS FOR ITSELF.
	FP	QUESTIONS OF STATE
	LM	RESPONSE
2:17	J	READ STAY ORDER WHICH REFERS TO IDAHO CODES.
	FP	APPEARS THAT WOULD BE A LEGAL QUESTION. PRESENTED LEGAL ARGUMENT.
	ALL	DISCUSSION ON ISSUES.
	J	COURT EXPLAINED WHAT IT THOUGHT THE ISSUE OF "DELAY" WAS.
	FP	READ FROM JUDGE VERBY'S DECISION.
	J	DOES NOT HAVE KNOWLEDGE OF WHAT WAS PRESENTED TO JUDGE VERBY IN THE APPEAL.

2:21	FP	WOULD LIKE TO PROCEED WITH QUESTIONS AS AN OFFER OF PROOF.
	J	DEF'S ATTORNEY NEEDS TO CITE SOME LAW OR CASES.
	FP	ARGUES THERE ARE MANY FORMS OF PREJUDICE.
	J	TRUE - BUT HERE NEED TO DECIDE WHAT KINDS OF PREJUDICE ARE UNLAWFUL.
2:23	FP	RESPONSE/ARGUMENT AS TO WHAT PREJUDICE IS BEING IF AS A RESULT OF THE DELAY OF TRANSCRIBING RECORDS IN THIS CASE, DEF HAS BEEN DENIED AN EXISTING PROPERTY RIGHT INTEREST OR THAT THE TERMS OF HIS SENTENCE HAVE BEEN MODIFIED WITHOUT HEARING. HIS POTENTIAL OF BEING EXPOSED TO A PROBATION VIOLATION HAS BEEN VIOLATED: DUE PROCESS.
	J	THIS IS THE FIRST THAT THE COURT HAS BEEN NOTIFIED OF THAT PURPOSE OF THE "PREJUDICE" BEING ARGUED. NOW A RULE OR CASE LAW NEEDS TO BE PRESENTED IN SUPPORT OF THE DEF'S ARGUMENT.
2:25	FP	DIDN'T FIND ANY IN STATE OF IDAHO. CITED 76 LR 3RD - NEW MEXICO.
	J	COMMENTS AGAIN THAT MR. PALMER PREPARED THE STAY ORDER.
	FP	RESPONSE TO THAT.
		CONTINUED QUESTIONING ALONG LINE OF PROPERTY INTEREST.
	DEF	HAS VEHICLES USED FOR COMMERCIAL PURPOSES. REVIEWED EXHIBIT "A" - COPY OF ISTAR'S PRINTOUT.
	LM	OBJECTION
	J	DEF CANNOT LAY FOUNDATION FOR EXHIBIT "A"
	FP	OFFER "A"
	LM	OBJECT - LACK OF FOUNDATION
	J	SUSTAIN
	ALL	DISCUSSION
	LM	WITHDRAW OBJECTION
	J	ADMIT "A"
2:31	DEF	DISCUSSED BASIS OF DENIAL OF INSURANCE WITH INSURANCE COMPANY.
	LM	OBJECTION - LEADING
	J	SUSTAINED
	DEF	BASED ON LACK OF UMBRELLA INSURANCE, STOPPED BUYING VEHICLES UNTIL LEARNED THE OUTCOME OF THIS CASE.
	LM	OBJECTION - IRRELEVANT
	J	SUSTAINED
2:32	DEF	TESTIFIED HOW DECISION AND STAY AND VARIOUS DOCUMENTS HAVE IMPACTED HIS BUSINESS AND PERSONAL LIFE.
	LM	OBJECTION - SPECULATIVE
	J	MR. PALMER'S ARGUMENT AND SPECULATION WOULD BE CLARIFIED WHEN THERE IS A FINAL JUDGMENT ENTERED.
	DEF	VARIES AT RENTAL AGENCIES FROM 3-5 YEARS AS TO WHEN CAN RENT A CAR IF HAVE DUI.
2:35	LM	CROSS EXAM
	DEF	TALKED TO HIS INSURANCE COMPANY OVER A YEAR AGO ABOUT UMBRELLA COVERAGE. DID NOT SEND A COPY OF THE STAY ORDER TO THEM. STATE HAS NOT ATTEMPTED TO VIOLATE HIS PROBATION IN ANY WAY AS OF THIS DATE.
	FP	OBJECTION - ATTY/CLIENT PRIVILEGE
	J	SUSTAINED
2:40	FP	RE-DIRECT
	LM	OBJECTION - SPECULATIVE
	J	SUSTAINED
2:41	FP	NOTHING FURTHER
	LM	CALLS VALERIE LARSON
	CLERK	SWORE VALERIE LARSON
	VL	EMPLOYED AS COURT REPORTER FOR JUDGE VERBY. PART OF DUTIES IS

		TO TRANSCRIBE HEARINGS. RECALLS GETTING A REQUEST IN DEC. OF 2006 TO TRANSCRIBE THE MOTION TO SUPPRESS HELD IN MAGISTRATE. SHE WAS OUT ON MEDICAL LEAVE FROM MARCH 2006 UNTIL AUGUST 2006 AND COULD NOT DO ANY TYPING DURING THAT TIME. SHE CAME BACK PART TIME AUGUST 2006 TO MARCH 2007. TESTIFIED HER OTHER DUTIES, PARTICULARLY TRANSCRIBING SUPREME COURT APPEALS.
	FP	OBJECTION - HEARSAY
2:44	J	OVERRIDE, TESTIFY AS TO HER UNDERSTANDING
	VL	PRIORITY OF APPEALS GIVEN IN HER JOB BY SUPREME COURT. IS TO TRANSCRIBE JUDGE VERBY'S APPEALS, THEN SUPREME COURT APPEALS, THEN MAGISTRATE APPEALS. WHILE SHE WAS OUT ON MEDICAL LEAVE, NO ONE ELSE WAS DOING THE TRANSCRIBING. WHEN SHE CAME BACK, BECAUSE OF BACK INJURY COULD NOT SIT FOR VERY LONG. THERE WAS A VERY HEAVY WORKLOAD FOR TRANSCRIPTS WHEN SHE RETURNED TO WORK. RECALLS WHEN THE PAPERWORK FOR THIS CASE CAME TO HER, SHE CALLED MR PALMER TO SEE IF IT WAS STILL NEEDED BECAUSE IT HAD BEEN SUCH A DELAY.
	FP	CROSS EXAM
2:49	VL	ACTUAL EMPLOYER IS THE STATE OF IDAHO. WORKS FOR JUDGE VERBY. THERE WAS A COURT REPORTER WHO FILLED IN FOR HEARINGS DURING HER ABSENCE BUT NO ONE HIRED TO DO TRANSCRIPTIONS.
	LM	OBJECTION
	J	SUSTAINED
2:50	VL	THERE IS A SICK LEAVE POLICY FOR HER POSITION. SHE WAS OUT ON SICK LEAVE. NO ONE WAS HIRED TO DO TRANSCRIPTS FOR SUPREME COURT. CURRENTLY THERE IS HELP FOR MAGISTRATE TRANSCRIPTS BUT DON'T KNOW WHEN THAT STARTED.
	J	WITNESS EXCUSED.
2:53	LM	NO FURTHER EVIDENCE.
	FP	CLOSING ARGUMENT PRESENTED. REFERRED TO JUDGE VERBY'S DECISION ON APPEAL. CITED THE CHAVEZ CASE FROM NEW MEXICO.
2:58	LM	RESPONSE AND ARGUMENT ON BEHALF OF STATE.
3:03	FP	RESPONSE AND FINAL ARGUMENT.
3:05	J	NOTE THAT REASON FOR DELAY WAS FROM UNAVAILABILITY OF TRANSCRIBER, NOT STATE OR LAW ENFORCEMENT. NOTE THAT STAY ORDER WAS DRAFTED BY DEF AND HIS ATTORNEY. WITH RESPECT TO EXTENSION OF PROBATION - THAT ISSUE IS NOT RIPE AT THIS POINT BECAUSE NO FINAL JUDGMENT HAS BEEN ENTERED.
	ALL	DISCUSSION PREVIOUS STAY ORDER STILL IN EFFECT BECAUSE IT WAS REINSTATED WITH NEW APPEAL.
	J	FIND THAT DATE OF COMMENCEMENT OF PROBATION WILL BE DETERMINED WHEN THE FINAL JUDGMENT IS ENTERED. FIND ISSUE OF PREJUDICE AS TO PROPERTY RIGHTS IS SPECULATIVE. FIND "PREJUDICE" THAT JUDGE VERBY WAS TALKING ABOUT WAS PREJUDICE AS TO MERITS OF THE CASE. <b>DENY DEF'S MOTION TO DISMISS. MS. MEULENBERG TO PREPARE ORDER AND INCLUDE THE LIFTING OF STAY AND IMPOSITION OF JUDGMENT. MR. PALMER MAY THEN FILE AN APPEAL AGAIN IF HE SO WISHES.</b>
3:11		END

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

2008 JAN 17 P 4:40

CMB

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	Case No. CR-2004-0009931
	)	
vs.	)	NOTICE OF APPEAL
	)	
DAN S. JACOBSON,	)	
	)	
Defendant-Appellant.	)	
	)	

TO: Lori Meulenberg, Prosecutor, City of Sandpoint, and to the Clerk of the above-entitled Court:

1. Title of the action or proceedings:  
  
State v. Dan S. Jacobson
2. Title of the court from which appeal is taken:  
  
Magistrate Division, First Judicial District of the State of Idaho, in and for County of Bonner
3. The number assigned to the action or proceedings by the trial court:  
  
CR-2004-0009931
4. Title of the court to which the appeal is taken:  
  
District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner
5. Order Denying Motion to Dismiss and Reinstating Stay entered by Honorable Debra Heise, Magistrate, dated January 14, 2008.

NOTICE OF APPEAL, Page 1

6. Statement as to whether the appeal is taken upon matters of law, or upon matters of fact, or both:

Both.

7. Statement as to whether the testimony and proceedings of the original trial or hearing were recorded or reported, together with an identification of the method of recording or reporting and the name of the party or person in whose possession such recording or reporting is located.

Tape recording in the possession of the Bonner County Clerk.

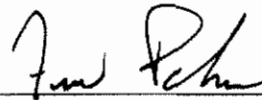
8. State the issues on appeal which the appellant then intends to assert in the appeal; provided, such statement may be filed separately within fourteen (14) days after the filing of the notice of appeal and any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal thereafter discovered by the appellant.

Issues are as follows:

- a. If Defendant was denied due process of law.
  - b. If substantial evidence exists supporting the Court's ruling.
  - c. If Court abused its discretion in denying motions.
9. I hereby certify that this Notice of Appeal has been served upon Lori Meulenberg, Prosecutor, City of Sandpoint, by depositing a true and correct copy of in her mailbox at the Bonner County Courthouse, Sandpoint, Idaho.

January, 2008.

DATED this 17 day of ~~December~~, 2007.



Fred R. Palmer, Attorney for  
Defendant-Appellant

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

106 WEST SUPERIOR STREET  
SANDPOINT, IDAHO 83864

2008 JAN 18 P 1:45

CLERK OF DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2004-0009931
	)	
vs.	)	STAY ORDER
	)	
DAN S. JACOBSON,	)	
	)	
Defendant.	)	

The Honorable Debra A. Heise, Magistrate, hereby enters the following stay orders pending appeal to the District Court of the First Judicial District in the above matter.

1. Execution of Judgment and Sentence entered July 18, 2005 and January 14, 2008 is stayed pursuant to Rule 55.4(a), ICR;
2. Stay of Judgment entered in the above cause on July 18, 2005 and January 14, 2008 pursuant to Rule 54.5(B)(3), ICR.

The above identified stay orders are to remain in effect until otherwise ordered by the Court and are based upon Defendant's timely appeal filed herein..


DATED this 18 day of January, 2008.

  
Debra A. Heise, Magistrate

I hereby certify that a true and correct copy of the foregoing was \_\_\_ hand delivered, \_\_\_ faxed, ☒ mailed, postage prepaid, this 28 day of January, 2008 to:

Lori Meulenberg, Prosecutor *I/O*  
City of Sandpoint  
Courthouse Mail  
Bonner County Courthouse

Fred R. Palmer  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
Fax: 265-8983



---



OFFICE OF THE CITY ATTORNEY  
William Herrington (ISBN 1844)  
Lori Meulenberg (ISBN 4313)  
City of Sandpoint  
1123 Lake Street  
Sandpoint, ID 83864  
(208) 263-0534  
FAX (208) 255-1368

2008 JAN 22 A 11:41

71

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER  
MAGISTRATE DIVISION

STATE OF IDAHO,	}	
Ex Rel City of Sandpoint,	}	
	}	Case No. 2004-0009931
Plaintiff,	}	
	}	
vs.	}	<b>ORDER</b>
	}	
Dan Jacobson,	}	
	}	
Defendant.	}	

THE ABOVE entitled matter came before the Court on the  
14th day of January, 2008 on Defendant's Motion to Dismiss  
for Delay. Fred Palmer represented the defendant; Lori  
Meulenberg represented the State. After evidence and  
testimony being presented by the Defense and the State, the  
Court finds the following:

- 1) The delay in the preparation of the transcript was  
not the fault of the State or law enforcement,  
but was due to the unavailability of the  
transcriber due to medical leave.
- 2) The Stay Order was drafted by the Defendant and his

attorney.

- 3.) Because the final judgment has not entered, the issue of extension of probation is not yet ripe.
- 4.) The date of commencement of probation will be determined when the final judgment is entered.
- 5.) The issue of prejudice as to property rights is speculative.
- 6.) The Defendant has failed to show any prejudice as to the merits of the case.

THEREFORE, the Court DENIES DEFENDANT's Motion to Dismiss.

IT IS HEREBY ORDERED that the stay shall be lifted and judgment entered as of the date of this order.

DATED this 22 day of January, 2008.

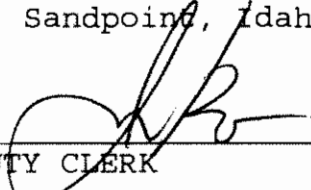
  
Magistrate Debra Heise

#### CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was hand delivered/mailed, postage prepaid, this 28 day of January, 2008, and was addressed to:

Lori Meulenberg  
Attorney at Law  
Courthouse Mail  
Sandpoint, Idaho 83864

Fred Palmer  
Attorney at Law  
106 W. Superior St.  
Sandpoint, Idaho 83864

  
DEPUTY CLERK

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DISTRICT

2008 JUN 24 P 1:51

MARIE LUCAS  
CLERK DISTRICT COURT

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

DAN STANLEY JACOBSON,

Defendant/Appellant.

CASE NO: cr-2004-9931

**ORDER ESTABLISHING  
BRIEFING SCHEDULE  
ON APPEAL**

A Notice of Appeal was filed in the above entitled matter on January 17, 2008, by the Defendant, Dan Jacobson. On June 9, 2008, a Notice of Settling Transcript on Appeal was entered by the Clerk of the District Court.

NOW, THEREFORE, pursuant to Rule 83(v) of the Idaho Rules of Civil Procedure and Rules 34 and 35 of the Idaho Appellate Rules, briefs must be filed according to the following schedule:

- a. Appellant(s) must file an opening brief (Appellant's Brief) within thirty-five (35) days from the date of this order;
- b. Respondent(s) must file a reply brief (Respondent's Brief) within twenty-eight (28) days from the date the Appellant's Brief is filed;
- c. Appellant(s) will then have twenty-one (21) days from the date the Respondents' Brief is filed to submit a closing brief.

The briefs must be in compliance with Rules 34 and 35 of the Idaho Appellant Rules, except that the briefs need not be bound or have colored covers and need not contain a Table of Contents or a Table of Cases and Authorities.

Briefs must be served on the other parties to the appeal by mailing a copy to the other party on the same date that the brief is filed.

YOU ARE FURTHER NOTIFIED that failure of any party to timely submit briefs in accordance with the above schedule and the governing rules may be grounds for such action or sanctions as the court deems appropriate, which may include **dismissal** of the Appeal, pursuant to Rule 83(s) of the Idaho Civil Rules of Procedure.

DATED this 24<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
Steve Verby  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, U.S. postage prepaid, this 26 day of June, 2008, to:

Fred Palmer  
106 W Superior St  
Sandpoint, ID 83864

Lori Meulenberg  
Sandpoint City Prosecutor  
1123 Lake Street  
Sandpoint, ID 83864

  
\_\_\_\_\_  
Deputy Clerk

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

2008 NOV 20 A 9 13

CLEAR DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	Case No. CR-2004-0009931
	)	
vs.	)	STIPULATION
	)	
DAN S. JACOBSON,	)	
	)	
Defendant-Appellant.	)	

Comes now the Parties, through their attorneys, and jointly move the Court to vacate and reschedule the oral argument on appeal in the above matter from Thursday, November 20, 2008 to a date at which the Honorable Steve Verby, District Court Judge, will be available. The basis of this motion is that oral argument is premised, in part, on a prior appellant decision issued by Judge Verby herein.

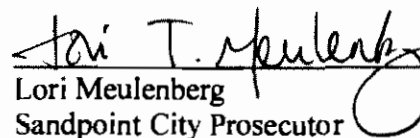
For purposes of scheduling, counsel for Defendant is not available November 24 through December 19, 2008.

Dated this 19 day of November, 2008



Fred R. Palmer  
Attorney for Defendant

So Stipulated:



Lori T. Meulenberg  
Sandpoint City Prosecutor

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO } ss  
County of Bonner  
FILED 11-20-08  
AT 9:30 O'Clock 9 M  
CLERK, DISTRICT COURT  
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	Case No. CR-2004-0009931
	)	
vs.	)	ORDER CONTINUING ORAL ARGUMENT
	)	
DAN S. JACOBSON,	)	
	)	
Defendant-Appellant.	)	

Good cause appearing and based upon the stipulation of the parties,

IT IS HEREBY ORDERED that the oral argument on appeal in the above matter now set for November 20, 2008 is hereby vacated and shall be regularly reset by the Court, to a date at which the Honorable Steve Verby, District Court Judge, will be available after December 19, 2008.

Dated this 20 day of November, 2008

  
District Court Judge

I hereby certify that a true and correct copy of the foregoing was X hand delivered, X faxed, \_\_\_ mailed, postage prepaid, this 21 day of November, 2008 to:

Lori Meulenberg, Prosecutor  
City of Sandpoint  
Courthouse Mail  
Bonner County Courthouse

Fred R. Palmer  
Attorney at Law  
FAX 263-8983



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

COURT MINUTES

SR. JUDGE: STEVE VERBY  
REPORTER: VAL LARSON  
CLERK: CHERIE MOORE  
DIVISION: DISTRICT

CASE NO. CR-2004-0009931  
DATE: 02/02/2009 TIME: 01:30 PM  
CD: 09-036

STATE OF IDAHO

vs DAN STANLEY JACOBSON

Plaintiff/Petitioner

Defendant/Respondent

Atty: SANDPOINT CITY PROSECUTOR

Atty: FRED PALMER

SUBJECT OF PROCEEDINGS  
CHARGE

ORAL ARGUMENT ON APPEAL

INDEX	SPEAKER	PHASE OF CASE
1:33	J	<b>Calls Case</b>
		<b>Present:</b> DEFENDANT NOT PRESENT, LORI MEULENBERG, FRED PALMER
	J	MR. PALMER?
	FP	LOOKED THROUGH THE OPINION AGAIN AND THE LAW OF THE CASE AT THE TIME IT WAS REMANDED – THE COURT CITED THAT THERE IS A DUE PROCESS RIGHT TO PROVIDE ACCESS TO A PHONE WHEN REQUESTED IN A DUI CASE AND IF THE RECORD SHOWS THAT THERE WAS A REQUEST AND IT WAS DENIED, THEN THERE IS A DUE PROCESS VIOLATION AT A MINIMUM – THE STATE CANNOT AVOID THE DUE PROCESS VIOLATION – THE DENIAL WAS BASED ON AN ATTITUDE OF MR. JACOBSON'S AND SECONDLY, THE FIRST COME FIRST SERVE POLICY OF THE JAIL – IT WAS AN OPPORTUNITY FOR THE STATE TO EXPAND ON THE EVIDENCE THAT MR. JACOBSON HAD A BAD ATTITUDE – THERE WAS TESTIMONY FROM DEPUTY INMAN SPECULATING AS TO WHAT THE GENERAL MEANING WAS OF THE PHRASE – MR. JACOBSON TESTIFIED THAT HE WAS UPSET AT THE BAIL BONDSMAN – EVEN JUDGE HEISE INDICATED THAT HE WAS DIRECTING HIS BEING UPSET – THERE WAS NO DIRECTING OF HIS FRUSTRATION OF THE JAILER – THERE WAS NOTHING ADDITIONAL – WHOSE BURDEN IS IT TO ANSWER THIS QUESTION – JUDGE HEISE FELT THAT IT WAS THE DEFENDANT'S BURDEN – REQUEST FOR A CALL WAS DENIED – THE QUESTION OF BURDEN IS A CASE BY CASE ISSUE – THERE IS A SUB-ISSUE ON WHO HAS THE BURDEN – IT SHOULDN'T HAVE BEEN OUR BURDEN TO BEGIN WITH – I DON'T THINK IT SHOULD HAVE BEEN THE DEFENSE BURDEN – SAME ARGUMENT – WE DID STIPULATE ON RECORD THAT PRISONERS WERE BOOKED AHEAD OF JACOBSON – NONE WERE DUI'S – ALL WERE TRANSPORTS FROM KOOTENAI COUNTY – DEFENSE ISN'T IN A POSITION TO UNDERSTAND WHAT THE THINKING IS OF THE JAILERS – IT'S AN IMPOSSIBLE BURDEN TO MEET – IT'S WELL-FOUNDED THAT DUI'S PRESENT AN INHERENT EXIGENCY – [CITES DUE PROCESS IN <i>Carr</i> ] – I THINK THIS IS BEING OVERLOOKED – WHAT THE JAIL DID IS THAT THERE'S AN ATTITUDE, PUT HIM IN HOLDING, PUT EVERYONE IN FRONT AND MR. JACOBSON SITS IN HOLDING FOR 2 HOURS





STATE OF IDAHO  
COUNTY OF BONNER

2009 FEB 13 P 4:39

CLERK OF COURT  
49

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER**

**STATE OF IDAHO,**

**Plaintiff/Respondent,**

**v.**

**DAN S. JACOBSON,**

**Defendant/Appellant.**

**CASE NO. CR-2004-0009931**

**DECISION ON APPEAL**

The Court affirms the denial of the appellant's Motion to Suppress because there is evidence in the record to support the fact that the jail staff did not interfere with or affirmatively deny his access to a telephone. The jail's first come-first served booking policy, as applied under these circumstances, did not preclude the appellant's exercise of his due process rights. The denial of the appellant's Motion to Dismiss is also affirmed because there is evidence to support the fact that the appellant was not prejudiced by the delay in the preparation of the transcript.

**I. FACTUAL BACKGROUND**

Appellant Dan Jacobson was arrested for Driving Under the Influence of Alcohol (DUI) just after 1:00 a.m. on December 29, 2004, by an officer of the Sandpoint City Police Department. He was transported to the Bonner County Jail where two breath tests were obtained to determine his blood alcohol content (BAC). The first test was taken at 1:47 a.m. with a result

of 0.170. The second test was administered at 1:50 a.m. with a result of 0.181. The arresting officer left the jail at 2:24 a.m.

One hour after the State's tests were obtained, at approximately 2:54 a.m., Mr. Jacobson was allowed to make at least two phone calls, one at 2:54 a.m. and the second at 2:57 a.m. It is unclear whether the initial phone call resulted in a connection with the party being called. One of the phone calls was to a bail bondsman. During the phone call, Mr. Jacobson became agitated because the bondsman wanted a co-signer before he would post a five hundred dollar (\$500) bond for Mr. Jacobson's release, even though Mr. Jacobson had credit cards that would cover the bond. Booking of Mr. Jacobson had not yet occurred at the time the second phone call was made. He was returned to the holding cell after the phone call because he displayed what a jail document described as an "attitude." Consequently, he was required to wait to be booked before he was allowed an additional call. Mr. Jacobson never communicated to any law enforcement personnel that he wanted to call an attorney or that he wanted to place a call to set up another evidentiary test. His booking was delayed because jail policy required that four other prisoners who arrived at the jail before he did would be booked before him.

At approximately 5:00 a.m., after booking all other individuals, the jail staff finished booking Mr. Jacobson. The jail then allowed him to make another (a third) phone call at 5:26 a.m., about four and one-half hours after his arrest and three and one-half hours after the State obtained the BAC test results. He bonded out at 6:44 a.m.

## **II. PROCEDURAL HISTORY**

After Mr. Jacobson's Motion to Suppress his BAC test results was denied, he entered a conditional plea of guilty to a misdemeanor violation of Idaho Code § 18-8004, and was

sentenced on July 18, 2005. He timely filed a Notice of Appeal on July 18, 2005. On July 19, 2005, the trial court entered an Order Staying Execution of Judgment and Sentence pending appeal in this Court. The estimated transcript costs were paid on July 27, 2005, and a Notice of Lodging of Transcript was filed on January 11, 2007. On January 31, 2007, Mr. Jacobson filed a Motion to Dismiss the underlying charge.

The Motion to Dismiss, and the oral argument on appeal (of the denial of the Motion to Suppress), were heard by the Court on June 4, 2007. On appeal, Mr. Jacobson argued that the Motion to Suppress was improperly denied because his due process rights were violated when he was denied meaningful access to a telephone in the hours immediately following his arrest. He argued that if he had been provided telephone access, he could have either bonded out or contacted an attorney to obtain his release. Then, upon being released, he could have obtained an independent test to measure his blood alcohol content, and gathered other exculpatory evidence. His Motion to Dismiss the underlying charge was based on the ground that there was an unreasonable delay in processing his appeal, i.e., it took 16 months for the transcript to be lodged, which is sufficient in itself to show prejudice and should be grounds for dismissal.

On August 9, 2007, the Court issued a decision on appeal, remanding the case to the trial court for further findings of fact relating to both motions. The trial court was asked, in regard to the Motion to Suppress, to determine: (1) whether Mr. Jacobson asked for another phone call after he phoned the bail bondsman; (2) if yes, then whether the jail staff's decision to incarcerate Mr. Jacobson in a holding cell was lawful (i.e., whether the jail staff interfered with or affirmatively denied Mr. Jacobson's access to a phone); and (3) whether the exigencies faced by Mr. Jacobson under the totality of the circumstances (i.e., rapid metabolism of alcohol in the

blood) outweighed the exigencies faced by the other prisoners who were booked ahead of him pursuant to the jail's first come-first served policy. For the Motion to Dismiss, the trial court was asked to: First, address and determine the issues presented in the Motion to Suppress; second, make an examination of whether Mr. Jacobson was prejudiced by the delay, pursuant to Idaho Criminal Rule 48(2); and third, depending upon the findings of fact and legal conclusions on the Motion to Suppress, decide whether or not to grant the Motion to Dismiss because of the extended delay.

On October 22, 2007, the trial court held a hearing on remand. On November 19, 2007, the trial court issued its factual findings and legal conclusions in an Order on Remand. On December 27, 2007, the trial court issued an amended Order vacating the previously entered Order Denying Motion to Dismiss, Order Reinstating Judgment, and Order Vacating Stay, to allow Mr. Jacobson an opportunity to present further evidence and argument. (The Order Denying Motion to Suppress was not vacated).

On January 14, 2008, an evidentiary hearing was held in the trial court on the Motion to Dismiss. On January 22, 2008, the trial court issued written findings of fact from the hearing in an Order denying the motion. The Order also lifted the stay and imposed judgment as of the date of the Order.

On January 17, 2008, Mr. Jacobson filed a Notice of Appeal. On August 1, 2008, he filed an Appellant's Brief. On August 27, 2008, the State of Idaho (City of Sandpoint) filed a Respondent's Brief. Oral argument on appeal was heard on February 2, 2009, at the conclusion of which the Court took the matter under advisement. After further consideration of the issues presented on appeal, the Court is prepared to rule.

### **III. ISSUES ON APPEAL**

Mr. Jacobson raises two issues on appeal. On the denial of his Motion to Suppress, Mr. Jacobson argues that the trial court erred in finding that the jail staff did not breach his due process rights by denying him access to a telephone. On the denial of his Motion to Dismiss, he argues that the trial court erred in finding that he suffered no prejudice from a 16-month delay in the preparation of the transcript.

### **IV. STANDARD OF REVIEW**

#### ***A. Standard of Review on Appeal***

“Upon an appeal from the magistrate to the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the Idaho appellate rules.” Idaho Criminal Rule 54.17(a). The district court defers to the trial court’s findings of fact when supported by substantial evidence, but exercises free review over questions of law. *State v. O’Neill*, 118 Idaho 244, 245, 796 P.2d 121, 122 (1990); *State v. Emory*, 119 Idaho 661, 662, 809 P.2d 522, 523 (Ct. App. 1991).

#### ***B. Motion to Dismiss***

Idaho Criminal Rule 48 provides the standard for dismissal of an action by the court. Rule 48 provides that:

(a) Dismissal on Motion and Notice. The court, on notice to all parties, may dismiss a criminal action upon its own motion or upon motion of any party upon either of the following grounds:

(1) For unnecessary delay in presenting the charge to the grand jury or if an information is not filed within the time period prescribed by Rule 7(f) of these rules, or for unnecessary delay in bringing the defendant to trial, or

(2) For any other reason, the court concludes that such dismissal will serve the ends of justice and the effective administration of the court's business.

(b) Order of Dismissal. When a court dismisses a criminal action upon its own motion or upon the motion of any party under this rule, it shall state in the order of dismissal its reasons for such dismissal.

(c) Effect of Dismissal. An order for dismissal of a criminal action is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.

### ***C. Motion to Suppress***

#### **1. Standard of Review for Motion to Suppress**

"A trial court's decision on a motion to suppress presents mixed questions of law and fact." *State v. Shelton*, 129 Idaho 877, 879, 934 P.2d 943, 945 (Ct. App. 1997); *State v. McAfee*, 116 Idaho 1007, 1008, 783 P.2d 874, 875 (Ct. App. 1989). The appellate court defers to the trial court's findings of fact if they are supported by the evidence. *State v. Connor*, 124 Idaho 547, 548, 861 P.2d 1212, 1213 (1993). However, the trial court's determination as to whether constitutional requirements have been satisfied in light of the facts found are freely reviewed. *State v. Medley*, 127 Idaho 182, 185, 898 P.2d 1093, 1096 (1995).

## **V. APPLICABLE LAW**

### ***A. Independent Testing After Arrest***

Pursuant to Idaho Code § 18-8002(4)(d), an individual who is suspected of driving under the influence has a right to procure an independent BAC test:

After submitting to evidentiary testing at the request of the peace officer, [the defendant] may, when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

See also Idaho Code § 18-8002(3)(e) ("After submitting to evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.").

In *State v. Madden*, the defendant was arrested for driving under the influence. 127 Idaho 894, 895, 908 P.2d 587, 588 (Ct. App. 1995). Prior to or during booking, she requested an independent blood test and asked to speak to her attorney. *Id.* The police refused her access to a telephone for approximately two hours after her initial request for an independent test and for three and one-half hours after her arrest. *Id.* The court concluded that by refusing the defendant access to a telephone, the officers denied Ms. Madden a meaningful and timely opportunity to make her own arrangements for an additional test. *Id.* at 896-97, 908 P.2d at 589-90. The court also noted that "[t]he independent test acts as a safeguard which 'provides the licensee with the opportunity to test the sufficiency of the original test results, and avoid the consequences of an erroneous deprivation of his or her driving privileges.' " *Id.* at 896, 908 P.2d at 589 (citing *Matter of McNeely*, 119 Idaho 182, 191, 804 P.2d 911, 920 (1990)).

#### ***B. Conferring with an Attorney***

On the same day the *Madden* opinion was released, the Idaho Court of Appeals also decided *State v. Carr*. 128 Idaho 181, 911 P.2d 774 (Ct. App. 1995). Like *Madden*, Ida Carr was arrested for driving under the influence. *Id.* at 182, 91 P.2d at 775. While she was being read the standard police advisory form, she requested access to a telephone in order to contact an attorney. *Id.* Ms. Carr was moved to a holding cell where she again asked if she could speak to an attorney. *Id.* She then made several more requests to contact an attorney. *Id.* The officers denied her requests until five hours after her arrest when she was permitted access to the telephone. *Carr*, 128 Idaho at 182, 91 P.2d at 775. *Carr* is distinguished from *Madden* in that



Carr did not assert her statutory right to an independent BAC test; however, the court found that the defendant was denied her due process rights because of the delay in allowing her to use a phone to contact counsel. *Id.* at 185, 911 P.2d at 778. In *Carr*, the court stated:

[W]hen a person is arrested for DUI and given an evidentiary BAC test, that person must be allowed, at a minimum, to make a phone call upon request to do so. Such contact provides the means through which the arrestee is able to gather evidence tending to refute the State's evidence of intoxication and thereby preserve the "right to a fair opportunity to defend against the State's accusations." *Chambers, supra.* [*Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038, 1045, 35 L.Ed.2d 297 (1973).] For example, the person contacted by the arrestee could facilitate the administration of an independent BAC test, a right guaranteed by I.C. § 18-8002(4)(d).

*Id.* at 184, 911 P.2d at 777.

### ***C. Use of a Telephone***

In 1997, the Court of Appeals again addressed the issue of due process for individuals charged with the crime of driving under the influence of intoxicants. In *State v. Shelton*, the defendant submitted to a breath test after he was arrested. 129 Idaho at 878, 934 P.2d at 944. Mr. Shelton was also informed that he could obtain an additional test at his own expense after the police conducted their evidentiary test. *Id.* He argued that his rights were violated because, among other things, the deputy sheriff did not advise him of his right to immediate access to a telephone following the administration of the evidentiary BAC test. *Id.* Mr. Shelton, however, did not assert his right to an independent BAC test, nor did he request the use of a telephone. *Id.* The court of appeals concluded that because Mr. Shelton failed to assert his right to an independent BAC test, the State did not violate his constitutional right to due process. *Id.* at 880, 934 P.2d at 946. The court stated:

Furthermore, access to a telephone at this point in the detention is important only in that it is the mechanism through which a DUI detainee executes his right to a

second test or to otherwise pursue evidence regarding his or her state of intoxication. Once a request has been made for the second evidentiary test or to use a telephone, the state may not interfere with or deny the detainee access to a telephone to arrange for such a test.

*Shelton*, 129 Idaho at 880, 932 P.2d at 946.

***D. The "Inherent Exigency" in DUI Cases***

The Court of Appeals revisited the due process issue in 2003 in *State v. Cantrell*, 139 Idaho 409, 80 P.3d 345 (Ct. App. 2003). Mr. Cantrell was arrested at approximately 3:30 p.m. *Id.* at 410, 80 P.3d at 346. He submitted to two breath tests around 4:30 p.m. *Id.* He was then offered a phone call, which he refused, and was placed in a holding cell. *Id.* Around 5:00 p.m., Mr. Cantrell's son arrived at the jail with a bail bondsman to post bail. *Id.* Mr. Cantrell bonded out between 8:15 and 8:30 p.m. *Cantrell*, 139 Idaho at 410, 80 P.3d at 346. The defendant argued that his due process rights were violated because of the three-hour delay in releasing him from jail. *Id.* The court stated that if a detainee affirmatively asserts the right to an independent BAC test, the state may not interfere with or deny the detainee the opportunity to make arrangements for such testing. *Id.* at 411, 80 P.3d at 347. The court concluded that Mr. Cantrell's rights were not violated because he never requested independent testing nor did he seek to use the telephone to arrange for independent testing. *Id.* at 412, 80 P.3d at 348. Further, Mr. Cantrell did not provide evidence to show that the delay in his release was caused by the jail. *Id.* However, the court did reiterate the special circumstances presented in DUI cases that call for a specific standard for determining whether due process rights have been violated. The court stated:

The appellate courts of this state have recognized that there is an "inherent exigency" in a DUI setting due to the destruction of the evidence by the metabolism of alcohol in the blood. *State v. Woolery*, 116 Idaho 368, 370, 775

P.2d 1210, 1212 (1989); *State v. Madden*, 127 Idaho 894, 896, 908 P.2d 587, 589 (Ct. App. 1995). Therefore, a detainee's opportunity to gather exculpatory evidence in such cases lasts only a short time following the arrest and administration of the state's testing. *State v. Carr*, 128 Idaho 181, 184, 911 P.2d 774, 777 (Ct. App. 1995).

*Cantrell*, 139 Idaho at 411, 80 P.3d at 347.

***E. The Requirement that the Defendant Request Independent Testing or Access to a Telephone***

The Court of Appeals' most recent decision on this issue came in *State v. Hedges*, 143 Idaho 884, 154 P.3d 1074 (Ct. App. 2007). In *Hedges*, the defendant was pulled over for failure to dim his headlights at 1:33 a.m. *Id.* at 885, 154 P.3d at 1075. The officer who made the stop smelled alcohol on Mr. Hedges' breath and conducted a field sobriety test. *Id.* Mr. Hedges was then taken to the police station for a breath test. *Id.* After discussing the test with the police officer, the defendant agreed to take the test, but also stated the he would "go get a blood test on his own." *Id.* After being booked, Mr. Hedges contacted a bail bondsman. *Hedges*, 143 Idaho at 886, 154 P.3d at 1076. He was released on bond at 5:00 a.m. but did not obtain an independent test because he believed too much time had elapsed. *Id.* at 886, 154 P.3d at 1076. He argued that his due process rights were violated. *Id.* Mr. Hedges did not request the use of a phone, nor did he ask to arrange for an independent BAC test. *Id.* The court held that law enforcement did not affirmatively deny Mr. Hedges the use of a phone. *Id.* at 889, 154 P.3d at 1079. The court also found that the defendant did not indicate a desire to arrange for an independent BAC test while in custody. *Hedges*, 143 Idaho at 889, 154 P.3d at 1079. The court did not determine whether the jail staff created an unreasonable delay in releasing Mr. Hedges such that it denied or materially interfered with his ability to obtain a meaningful, independent BAC test upon release. *Id.*

## ***F. Due Process of Law***

### ***1. Asking for a Phone Call Invokes Due Process Rights***

In the context of a DUI arrest, due process of law requires that law enforcement provide the accused with a “reasonable opportunity” to procure a timely BAC test through his/her own efforts. *Hedges*, 143 Idaho at 887, 154 P.3d at 1077. Although the statutory provision mandates that a defendant be allowed such testing “when practicable,” the ability to prepare a defense after arrest is derived from constitutional provisions that allow a defendant to obtain other exculpatory evidence. *See also* Idaho Code § 18-8002(4)(d). The testimony of witnesses who are not employed in law enforcement as to the accused’s speech, coordination, lack of confusion, and physical appearance may be extremely important at the time of trial if such observations are obtained in a relevant time frame.

The ability to mount a defense is significantly diminished if the incarcerated individual has no access to objective third persons that can test or observe. Because the telephone is the lifeline to securing a defendant’s constitutional and statutory rights, precluding access to a phone also precludes one’s exercise of these critical rights. In this context, *Hedges* discusses *Madden* with approval: *Madden* found that a two-hour telephone call delay “deprived the defendant of a meaningful and timely opportunity to arrange for an independent BAC test . . . .” *Hedges*, 143 Idaho at 887, 154 P.3d at 1077. Similarly, the *Hedges* court focused on the *Cantrell* court’s finding that there could not be a due process violation (despite a three-hour delay in releasing him from custody after his bondsman arrived) because Mr. Cantrell did not assert his right to have an independent test, or make a request for a phone call, or ask to contact an attorney. *Id.*

In *Hedges*, the court's primary focus was what type of request the defendant would have to make in order to invoke his right to an independent test and start the due process clock ticking. The court established a bright line test and held that the accused "must make a clear and unambiguous statement of his or her desire to obtain an independent BAC test, such that a reasonable police officer under the circumstances would understand the statement to be an affirmative assertion thereof." *Hedges*, 143 Idaho 888, 154 P.3d at 1078. The court did not address the issues of a request for a phone call or a request to contact an attorney.

The right to secure an independent test and obtain other exculpatory evidence is inextricably tied to the ability to obtain one's freedom and have access to legal counsel. Law enforcement has a duty not to interfere with or affirmatively deny a defendant access to a phone once a request for an independent test is made. *Id.* at 888, 154 P.3d at 1077 (citing *State v. Rountree*, 129 Idaho 146, 150, 922 P.2d 1072, 1076 (Ct. App. 1996)); *see also Madden*, 127 Idaho at 896, 908 P.2d at 589. A similar obligation exists when one requests access to a phone to obtain one's freedom. Whether that freedom is to be obtained by calling a spouse, bondsman, or lawyer makes no difference. Because the goal of obtaining a test and/or exculpatory evidence is founded on the ability to communicate, and thus, obtain one's freedom, a citizen's due process and statutory rights would be hollow rights indeed if they could be made impossible to obtain by simply precluding phone access.

## VI. DISCUSSION

### ***A. Did the trial court err in finding no breach of due process in denial of Mr. Jacobson telephone access?***

Mr. Jacobson appeals the trial court's denial of his Motion to Suppress on due process grounds. He argues that: (1) asking for a phone call invoked his due process rights; and (2) the

jail's first come-first served booking policy, as applied to him—a DUI arrestee—may have precluded the exercise of his due process rights.

Mr. Jacobson argues that he requested a third telephone call at approximately 3:00 a.m. He was not allowed the third call until approximately 5:26 a.m., and the denial of telephone access was due to an intentional act of a Bonner County jailer. The jailer has no independent recollection of what occurred that resulted in his access to a third phone call being denied. However, Mr. Jacobson specifically recalls, on his second telephone call, telling a bail bondsman that it was ridiculous that a co-signer was required; and then, after hanging up, being told by a deputy that he had a bad attitude and had to go back to his cell. (Appellant's Brief, at p. 3). Mr. Jacobson contends that, under Idaho law, once he asked for a third telephone call, the jail staff could not interfere with or deny him access to the telephone to potentially arrange an independent BAC test, even though he never specifically told the jail staff that the purpose of the third call would be to arrange such a test. Mr. Jacobsen claims that by placing him in a cell for a "bad attitude," he was denied telephone access. Thus, he asserts that, under the totality of circumstances, he has met his burden of establishing a due process violation based upon such denial. (Appellant's Brief, at p. 4). Mr. Jacobson further claims that the delay in his telephone access and release was also a result of the Bonner County jail's first come-first served policy. He asserts that the policy may, as applied, constitute a due process violation depending upon the exigencies surrounding the other detainees awaiting booking. In this case, Mr. Jacobson argues that the policy resulted in a delay in his release because four other prisoners were booked ahead of him. Because he, however, as a DUI arrestee, had an established right to expedited processing by jail personnel, *see Cantrell*, 139 Idaho at 411, 80 P.3d at 347, the failure of the jail to

recognize and implement policies consistent with those rights constituted a procedural due process violation. (Appellant's Brief, at p. 5).

When presented with these arguments on the first appeal, the Court remanded the case to the trial court in order for certain findings of fact to be made. The first issue to be determined on remand was whether Mr. Jacobson asked for another phone call after he phoned the bail bondsman. The trial court concluded that he did, finding that:

Mr. Jacobson requested an additional phone call after having been given an opportunity to make at least two phone calls, one at 2:54 AM and the second at 2:57 AM, including the call he connected to the bail bondsman, and before he was returned to the holding cell. However . . . Mr. Jacobson never communicated to any law enforcement personnel that he wanted to call an attorney or that he wanted to place a call to set up an opportunity to take another test.

*Order on Remand, at p. 2.*

Next, the trial court was asked to determine whether the jail staff's decision to incarcerate Mr. Jacobson in a holding cell for a "bad attitude" was lawful. In other words, did the jail staff, by so doing, interfere with or affirmatively deny Mr. Jacobson access to a telephone. The trial court began by stating that criminal defendants alleging due process violations have the burden of proof. In this case, Mr. Jacobson had the burden of establishing that the jail staff affirmatively denied or interfered with his access to the telephone. The trial court determined that the record, as it exists, failed to support such a finding. The trial court found that:

The jail staff did *postpone* Mr. Jacobson's continued access to the phone during which time, in accordance with the jail policy of first-come, first served, they booked at least four and possibly five other persons who had been arrested and who arrived at the jail before Mr. Jacobson. . . . Mr. Jacobson's anger at the bondsman after his second telephone call and before he was placed in the holding cell was objectively obvious as verified by Mr. Jacobson at the suppression hearing . . . . Jail staff does not act unreasonably when they separate and

objectively obvious and self-described angry inmate to allow the anger to dissipate.

... all inmates must be booked before they are permitted to be released on bail. . . . it takes about an hour on average to book an inmate. Generally, the particular deputy who starts the booking process is the one who completes it.

Mr. Jacobson was booked as soon as the bookings of the four or five other prisoners were completed, and there is no evidence that staff was available in the jail to attend to Mr. Jacobson while the other prisoners were being booked. The two arresting officers, Officers Fry and Bailey, left the jail at 2:24 AM and were no longer available to assist. The jail staff commenced the booking process for Mr. Jacobson at 3:39 AM, 52 minutes after he was permitted his first two telephone calls and while he was sitting in the holding cell. Mr. Jacobson was officially booked at 5:02 AM. He was allowed a third telephone call at 5:26 AM, at which time he telephoned his wife. He was released at 6:44AM after posting bail. (*italics in original, citations omitted*).

*Order on Remand, at pp. 4-6.*

The record shows that Mr. Jacobson was given an opportunity to make two calls before being placed in a holding cell. Thus, his access to a telephone was not denied. The trial court found, upon hearing the testimony of Mr. Jacobson, that he was angry. In essence, the trial court found that Mr. Jacobson's own belligerent behavior necessitated the postponement of his access to a telephone for an additional call. Therefore, the trial court determined that Mr. Jacobson failed to sustain his burden of proof, by a preponderance of the evidence, that the jail staff interfered with or affirmatively denied his access to a telephone.

The trial court was asked to determine whether the exigencies faced by Mr. Jacobson under the totality of the circumstances (i.e., the rapid metabolism of alcohol in the blood) outweighed the exigencies faced by other prisoners booked ahead of him. The trial court found similarly little evidence in the record to support this contention. The trial court found that:

Prior to being booked, Mr. Jacobson was given two opportunities to make a telephone call, and he was able to connect with a bail bondsman in at least one of



them. The jail had no control over Mr. Jacobson's inability to meet the demands of the bondsman. When Mr. Jacobson became demonstrably angry, by his own admission, the jail deputy used her discretion to place Mr. Jacobson into a holding cell until he calmed down. . . . The jail then continued with its existing procedure of booking inmates who had been arrested prior to Mr. Jacobson, all of whom who [sic] had been arrested well before Mr. Jacobson and at least one of whom had been arrested over 24 hours before Mr. Jacobson. The resulting delay in the commencement of the booking process was 52 minutes from the time of his second telephone call.

*Order on Remand, at pp. 9-10.*

Accordingly, the trial court determined that the existing procedures did not deprive Mr. Jacobson in particular, or jail inmates in general, of due process rights; and thus, it denied Mr. Jacobson's Motion to Suppress.

In reviewing the trial court's denial of Mr. Jacobsen's Motion to Suppress, the Court will defer to the trial court's findings of fact if they are supported by the evidence. *State v. Connor*, 124 Idaho 547, 548, 861 P.2d 1212, 1213 (1993). However, the trial court's determination as to whether constitutional requirements have been satisfied in light of the facts found will be freely reviewed. *State v. Medley*, 127 Idaho 182, 185, 898 P.2d 1093, 1096 (1995). In this case, the trial court's findings of fact are supported by evidence in the record. Also, in light of the facts found, in particular that Mr. Jacobson was allowed to make at least two calls, and never communicated to the jail staff that the purpose of any of the calls was to contact an attorney or arrange an independent BAC test, the Court finds no error in the trial court's determination that Mr. Jacobson did not sustain his burden of proving that his constitutional due process rights were abrogated.

In the context of a DUI arrest, due process of law requires that law enforcement provide the accused with a "reasonable opportunity" to procure a timely BAC test through his/her own

efforts. *Hedges*, 143 Idaho at 887, 154 P.3d at 1077. The jail staff gave Mr. Jacobson the opportunity to make at least two phone calls about one hour after they administered two BAC tests, and within two hours of his arrest. These first two calls provided Mr. Jacobson with a "reasonable opportunity" to procure a timely BAC test by potentially using one or both of those calls to contact an attorney to arrange a test.

***B. Did the trial court err in finding no prejudice in the delay in the preparation of the transcript?***

Mr. Jacobson argues that he was prejudiced by the 16-month delay in preparation of the transcript. Since the delay was caused by the medical condition of the transcriber, Mr. Jacobson contends that the prejudice he suffered was the result of the failure of the transcriber's supervisor to find a replacement. He cites his inability to obtain insurance and rent vehicles (because court records showed he was convicted of a DUI), as well as the psychological impact of an extended probationary period, as significant examples of prejudice. In essence, he argues that: "Excusing a 16-month transcription delay due to a single person's medical condition demeans the right of every appellant to the timely processing of his or her appeal and is contrary to time deadlines and policy set forth in the Idaho Appellate Rules." (Appellant's Brief, at p .5).

When presented with this argument on the first appeal, the Court remanded the case to the trial court to make findings of fact. As instructed, the trial court held a separate evidentiary hearing on the Motion to Dismiss. The evidence presented at the hearing showed that the delay in the preparation of the transcript was not the fault of the State or law enforcement, but was due to the unavailability of the transcriber due to medical leave. Also, the trial court found that Mr. Jacobson failed to show any prejudice as a result of the delay. Therefore, the trial court denied Mr. Jacobson's Motion to Dismiss.

In reviewing the trial court's denial of the Motion to Dismiss, the Court will defer to the trial court's findings of fact if they are supported by the evidence. Here, the finding that Mr. Jacobson was not prejudiced from the delay is supported by the evidence. Further, the trial court, having heard the testimony of the witnesses, is better positioned to decide the Motion to Dismiss.


## VII. CONCLUSION

Although there is an allure to the due process arguments made by Mr. Jacobson, no Idaho court has ruled that a DUI arrestee is entitled to get as many phone calls as he wishes without specifying to law enforcement officers that the purpose of any of the calls is to contact a lawyer or arrange an independent BAC test. Therefore, absent some controlling authority, the resolution of this issue shall be left to the Idaho Court of Appeals or Supreme Court.

Based on the foregoing reasons, the trial court's denial of Mr. Jacobson's Motion to Suppress is affirmed. The trial court's denial of Mr. Jacobson's Motion to Dismiss is also affirmed.

IT IS SO ORDERED.

DATED this 13<sup>th</sup> day of February, 2009.

  
Steve Verby  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, regular mail, postage prepaid, and/or delivered this 13 day of February, 2009, to the following:

Fred Palmer  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864

Lori Meulenberg  
City of Sandpoint Prosecutor's Office  
Courthouse Mail  
Bonner County Courthouse

  
Deputy Clerk

FRED R. PALMER  
Attorney at Law  
106 West Superior Street  
Sandpoint, ID 83864  
208-263-8529  
ISB #1716

STATE OF IDAHO  
COUNTY OF BONNER  
DISTRICT COURT

2009 MAR -9 P 3 06

FRANK SCOTT  
DISTRICT COURT  
*Adm*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	Case No. CR-2004-0009931
	)	
vs.	)	NOTICE OF APPEAL
	)	
DAN S. JACOBSON,	)	
	)	
Defendant-Appellant.	)	

TO: Lori Meulenberg, Prosecutor, City of Sandpoint, and to the Clerk of the above-entitled Court:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, DAN S. JACOBSON, appeals against the above-named respondent to the Idaho Supreme Court from the Order to Remand to Magistrate Court by the District Court dated August 9, 2007 and from the Decision on Appeal by the District Court on February 13, 2009.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(6).

NOTICE OF APPEAL, Page 1

**FRED R. PALMER**  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983

-150-

3. Issues are as follows:

- a. Was it error for the District Court to remand to Magistrate for further findings on Defendant's appeal;
- b. Was it error for the District Court to affirm denial of Defendant's Motion to Suppress and Motion to Dismiss;
- c. Does substantial evidence exists supporting the Court's ruling affirming Magistrate;
- d. Did Court abused its discretion in its decision to Remand and its decision affirming Magistrate.

4. Has an order been entered sealing all or any portion of the record? If so, what portion? No.

5. The Appellant requests the preparation of the reporter's transcripts of the oral arguments on appeal to the District Court on the Magistrate's denial of Defendant's Motions to Dismiss and to Suppress. Oral arguments were held on June 4, 2007 and February 2, 2009 in Bonner County.

The Appellant requests the preparation of the transcript in compressed form as described in I.A.R. 26(c).

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R: N/A

7. I certify:

- a. That a copy of this Notice of Appeal is being served on the reporter.
- b. That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.
- c. That the estimated fee for preparation of the clerk's record has been

NOTICE OF APPEAL, Page 2

paid.

- d. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 9 day of March, 2009.

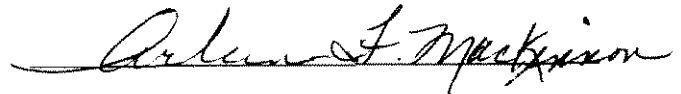


Fred R. Palmer, Attorney for  
Dan S. Jacobson Defendant/Appellant

I hereby certify that a true and correct copy of the foregoing was \_\_\_ mailed, postage prepaid, ☒ hand delivered, \_\_\_ faxed, this 9 day of March, 2009, to:

Lori Meulenberg  
City of Sandpoint Prosecutor  
Courthouse Mail  
Sandpoint, ID 83864

Val Larson  
Court Reporter  
Bonner County Courthouse  
Sandpoint, ID 83864



NOTICE OF APPEAL, Page 3

**FRED R. PALMER**  
ATTORNEY AT LAW  
106 W. SUPERIOR  
SANDPOINT, IDAHO 83864

(208) 263-8529  
Fax (208) 263-8983

**In the Supreme Court of the State of Idaho**

COUNTY OF BONNEVILLE  
WEST JUDICIAL

2009 MAR 24 A 9: 06

STATE OF IDAHO,

**Plaintiff-Respondent,**

**V.**

DAN S. JACOBSON,

**Defendant-Appellant.**

MARIE SCOTT  
CLERK DISTRICT COURT  
ORDER CONDITIONALLY  
DISMISSING APPEAL

Supreme Court Docket No. 36257-2009  
Bonner County Docket No. 2004-9931

The Appellant having failed to pay the necessary fees for preparation of the Clerk's Record and Reporter's Transcript on appeal and having failed to timely proceed with this appeal as required by Appellate Rule 21; therefore, good cause appearing;

IT HEREBY IS ORDERED that this appeal be, and hereby is, **CONDITIONALLY DISMISSED** unless the required name for preparation of the Clerk's Record and Reporter's Transcript are paid to the District Court Clerk within twenty-one (21) days from the date of this Order.

IT FURTHER IS ORDERED that this appeal is SUSPENDED until further notice.  
DATED this 18<sup>th</sup> day of March 2009.

For the Supreme Court

*Dorothy Beaver for*  
Dorothy Beaver, Deputy Clerk for  
Stephen W. Kenyon, Clerk

cc: Counsel of Record  
District Court Clerk  
District Court Reporter

ORDER TITLE – Docket No. 36257-2009



IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	SUPREME COURT NO. 36257
	)	
Plaintiff-Respondent,	)	CLERK'S CERTIFICATE
	)	
vs.	)	
	)	
DAN S. JACOBSON,	)	
	)	
Defendant-Appellant.	)	
_____	)	

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellant Rule 28.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 5 day of May, 2009.



MARIE SCOTT  
Clerk of the District Court

Susan M. Quillen  
Deputy Clerk

Clerk's Certificate

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	SUPREME COURT NO. 36257
	)	
Plaintiff,	)	CLERK'S CERTIFICATE OF EXHIBITS
	)	
vs.	)	
	)	
DAN S. JACOBSON,	)	
	)	
	)	
<u>Defendant/Appellant.</u>	)	

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the following is offered as the Clerk's exhibit on appeal:

Request for Discovery filed December 30, 2004  
Response to Request for Discovery filed January 18, 2005  
Plaintiff's Request for Discovery & Demand for Written Notice of Intent to Offer  
Defense of Alibi filed January 18, 2005  
CONFIDENTIAL ENVELOPE #1:  
Criminal and Driving Record Report Ordered 02/16/2005  
Inmate Information  
DUI Evaluation  
Plaintiff's Supplemental Request for Discovery filed February 25, 2005  
Response to Plaintiff's Supplemental Request for Discovery filed  
March 2, 2005  
CONFIDENTIAL ENVELOPE #2:  
Jail Log  
CD of Booking Area 12/29/04  
Notification of Prior Withheld Judgment Order filed August 22, 2005  
Letter from Lori Meulenberg with Attached Notice of Proposed Dismissal  
filed October 19, 2006  
Appellant's Brief filed January 31, 2007  
Appellant's Reply to Respondent's Brief filed April 16, 2007  
Supplemental Request for Discovery filed October 3, 2007  
Supplemental Response to Request for Discovery filed October 11, 2007  
Supplemental Response to Request for Discovery filed October 17, 2007  
Supplemental Response to Request for Discovery filed October 18, 2007

CONFIDENTIAL ENVELOPE #3:

Defendant's Exhibit C

Defendant's Exhibit D

Defendant's Exhibit E

Defendant's Exhibit F

Defendant's Exhibit G

Letter from Fred Palmer dated December 26, 2007

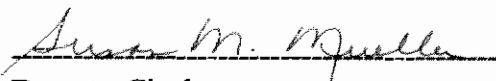
EXHIBIT LIST: Defendant's Exhibit A

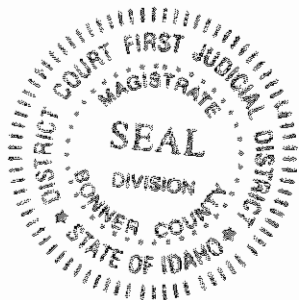
Appellant's Brief filed August 1, 2008

Respondent's Brief filed November 17, 2008

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 5 day of May, 2009.

Marie Scott  
Clerk of the District Court

  
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	SUPREME COURT NO. 36257
	)	
Plaintiff-Respondent,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
DAN S. JACOBSON,	)	
	)	
Defendant-Appellant.	)	

---

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that I have personally served or mailed, by United Parcel Service, one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

LAWRENCE WASDEN  
ATTORNEY GENERAL  
P.O. BOX 83720  
BOISE, ID 83720-0010

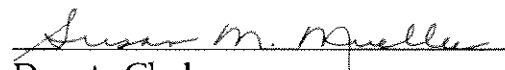
FRED R. PALMER  
ATTORNEY AT LAW  
106 W. SUPERIOR STREET  
SANDPOINT, ID 83864

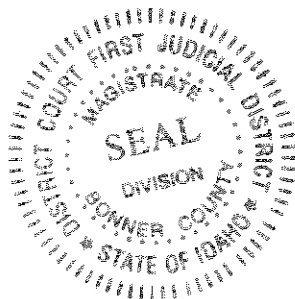
ATTORNEY FOR PLAINTIFF

ATTORNEY FOR APPELLANT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 5 day of May, 2009.

Marie Scott  
Clerk of the District Court

  
Deputy Clerk



Certificate of Service

# In the Supreme Court of the State of Idaho

STATE OF IDAHO,

Plaintiff-Respondent,

v.

DAN S. JACOBSON,

Defendant-Appellant.

AMENDED ORDER GRANTING  
MOTION TO AUGMENT AND TO  
SUSPEND THE BRIEFING SCHEDULE

Supreme Court Docket No. 36257-2009  
Bonner County Docket No. 2004-9931

A MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE AND STATEMENT IN SUPPORT THEREOF was filed by counsel for Appellant on September 14, 2009. Therefore, good cause appearing,

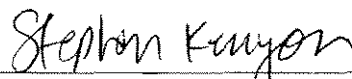
IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT be, and hereby is, GRANTED and the District Court Clerk shall submit to this Court the items listed below as EXHIBITS, items which were NOT submitted with this Motion, and not contained in this record on

1. Transcript of the Motion to Suppress hearing conducted on April 13, 2005;
2. Transcript of the Motion to Suppress hearing conducted on April 27, 2005;
3. Transcript of the Remand of Motion to Suppress hearing conducted on October 22, 2007; and
4. Transcript of the Remand of Motion to Dismiss hearing conducted on January 14, 2008.

IT FURTHER IS ORDERED that Appellant's MOTION TO SUSPEND THE BRIEFING SCHEDULE be, and hereby is, GRANTED and proceedings in this appeal shall be SUSPENDED until the exhibits are filed with this Court. Further, the District Court Clerk shall submit the items listed above to this Court on or before fourteen (14) days of the date of this Order, at which time the due date for filing Appellant's Brief shall be reset.

DATED this 30 day of September 2009.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record  
District Court Clerk